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Rules and Regulations

Title 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Tree Nuts), Department of Agriculture

[Navel Orange Reg. 66]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

§ 907.366 Navel Orange Regulation 66.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 23, 1964.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a.m., P.s.t., December 27, 1964, and ending at 12:01 a.m., P.s.t., January 3, 1965, are hereby fixed as follows:

(i) District 1: 350,000 cartons;

(ii) District 2: 90,236 cartons;

(iii) District 3: 50,000 cartons;

(iv) District 4: Unlimited movement.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 23, 1964.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64–13377; Filed, Dec. 24, 1964; 8:49 a.m.]

[Lemon Reg. 144]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

§ 910.444 Lemon Regulation 144.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910; 27 F.R. 8346), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 1001–1011) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on December 22, 1964.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a.m., P.s.t., December 27, 1964, and ending at 12:01 a.m., P.s.t., January 3, 1965, are hereby fixed as follows:

(i) District 1: 41,850 cartons;

(ii) District 2: 83,700 cartons;

(iii) District 3: 46,500 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Dated: December 23, 1964.

PAUL A. NICHOLSON,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F.R. Doc. 64–13378; Filed, Dec. 24, 1964; 8:49 a.m.]

Chapter X—Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture

[Milk Order 36]

PART 1036—MILK IN NORTHEASTERN OHIO MARKETING AREA

Order Amending Order

§ 1036.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary

and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of the said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Northeastern Ohio marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending the order effective not later than January 1, 1965. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the marketing area.

The provisions of the said order are known to handlers. The recommended decision of the Associate Administrator was issued November 27, 1964, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued December 15, 1964. The changes effected by this order will not require extensive preparation or substantial alteration in method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending the order effective January 1, 1965, and that it would be contrary to the public interest to delay the effective date of this amendment for 30 days after its publication in the FEDERAL REGISTER. (Section 4(c), Administrative Procedure Act, 5 U.S.C. 1001–1011.)

(c) *Determinations*—It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Northeastern Ohio marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

Subparagraphs (1) and (2) of § 1036.51(a) are revised to read as follows:

§ 1036.51 Class I milk prices.

* * * * *

(a) * * *

(1) Divide the total quantity of producer milk during the second and third months preceding by the gross quantity of milk utilized as Class I (adjusted to eliminate duplications due to interhandler transfers) at pool plants in the same two months, multiply the result by 100, and round to the nearest whole number. The result shall be known as the "current utilization percentage".

(2) Compute a "deviation percentage" by subtracting from the current utilization percentage as computed in subparagraph (1) of this paragraph, the "standard utilization percentage" shown below:

Month for which the price is being computed:	*Standard utilization percentage*
January	130
February	129
March	129
April	130
May	131
June	132
July	141
August	149
September	142
October	128
November	126
December	128

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: January 1, 1965.

Signed at Washington, D.C., on December 21, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 64–13269; Filed, Dec. 24, 1964; 8:46 a.m.]

[Milk Order 46]

PART 1046—MILK IN LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

Order Amending Order

§ 1046.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Louisville-Lexington-Evansville marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, three cents per hundredweight or such amount not to exceed three cents per hundredweight as the Secretary may prescribe, with respect to: (i) Producer milk and milk received from a cooperative association as a handler pursuant to § 1046.8(c); (ii) Other source milk allocated to Class I pursuant to § 1046.46(a) (3) and (7) and the cor-

responding steps of § 1046.46(b); and (iii) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

(b) *Determinations*—It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the marketing area, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order, amending the order, is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as herein amended; and

(3) The issuance of the order amending the order is approved or favored by at least two-thirds of the producers who participated in a referendum and who during the determined representative period were engaged in the production of milk for sale in the marketing area.

Order relative to handling—It is therefore ordered, That on and after the effective date hereof, the handling of milk in the Louisville-Lexington-Evansville marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

1. Section 1046.6 is revised to read as follows:

§ 1046.6 Louisville-Lexington-Evansville marketing area.

The "Louisville-Lexington-Evansville marketing area", hereinafter called the "marketing area", means all the territory geographically within the counties listed below and all territory wholly or partly therein occupied by municipal corporations and institutions owned or operated by Federal, State or local governments:

INDIANA COUNTIES

Clark.	Orange.
Crawford.	Perry.
Daviess.	Pike.
Dubois.	Posey.
Floyd.	Spencer.
Gibson.	Vanderburgh.
Harrison.	Warrick.
Knox.	Washington.
Martin.	

KENTUCKY COUNTIES

Adair.	Henderson.
Anderson.	Henry.
Bourbon.	Hopkins.
Boyle.	Jefferson.
Breckinridge.	Jessamine.
Bullit.	Larue.
Butler.	Lincoln.
Casey.	Logan.
Clark.	Madison.
Clinton.	Marion.
Cumberland.	McLean.
Daviess.	Meade.
Edmonson.	Mercer.
Fayette.	Muhlenberg.
Franklin.	Nelson.
Garrard.	Ohio.
Grayson.	Oldham.
Green.	Pulaski.
Hancock.	Russell.
Hardin.	Scott.
Hart.	Shelby.

KENTUCKY COUNTIES—Continued

Spencer.	Wayne.
Taylor.	Webster.
Union.	Woodford.
Washington.	

2. Section 1046.14 is revised to read as follows:

§ 1046.14 Producer milk.

"Producer milk" means that skim milk and butterfat contained in milk of a producer which is:

(a) Received from producers at a pool plant for the account of the person operating such plant. When milk is withdrawn at more than one pool plant from the same load delivered by a farm tank pickup truck, the entire load shall be deemed to have been received at the first pool plant at which any of such milk was withdrawn unless:

(1) There is an agreement among the operators of the pool plants receiving such milk providing for other receiving handler(s) to report and pay for all or a portion of such milk; or

(2) The milk involved is that which is delivered to pool plants for the account of a cooperative association pursuant to § 1046.8(c).

(b) Diverted by a handler from a pool plant to another pool plant for any number of days of the month. Milk so diverted shall be deemed to have been received by the diverting handler at the location of the pool plant from which it is diverted.

(c) Diverted from a pool plant to a nonpool plant for the account of the operator of the pool plant or a cooperative association, subject to the following conditions:

(1) Milk so diverted shall be deemed to have been received at the pool plant from which it is diverted; and

(2) Producer milk pursuant to this paragraph shall not include the milk of any person during any of the months of October, November, January and February on days on which it is diverted by a handler to a nonpool plant in excess of 22 days (11 days in the case of every-other-day delivery) during the month.

(d) Received by a cooperative association in its capacity as a handler pursuant to § 1046.8(c).

3. Section 1046.15 is revised to read as follows:

§ 1046.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, milk drinks (plain or flavored), reconstituted milk or skim milk, fortified milk or skim milk (including "diet" foods), cream (sweet or sour), half and half, or any mixture in fluid form of milk or skim milk and cream (except ice cream mix, frozen dessert mix, pancake mix, evaporated milk, condensed milk, aerated cream products, eggnog, and cultured sour mixtures not labeled as Grade A) which are neither sterilized nor packaged in hermetically sealed containers.

4. Section 1046.17 is revised to read as follows:

§ 1046.17 Route.

"Route" means delivery (including disposition from a plant store or from a distribution point and distribution by a vendor) of a fluid milk product(s) to a wholesale or retail outlet(s) other than to a milk plant(s). A delivery through a distribution point shall be attributed to the plant from which the Class I milk is moved through a distribution point to wholesale or retail outlets without intermediate movement to another milk plant.

5. In § 1046.41, paragraph (b) (4) and (7) is revised to read as follows:

§ 1046.41 Classes of utilization.

* * * * *

(b) * * *

(4) Disposed of for livestock feed, or in fluid milk products dumped if the market administrator has been notified in advance and afforded the opportunity to verify such dumping.

* * * * *

(7) In shrinkage of skim milk and butterfat, respectively, assigned pursuant to § 1046.42(b)(1), but not to exceed the following:

(i) Two percent of skim milk and butterfat, respectively, physically received directly from producers' farms and by diversion from other pool plants; plus

(ii) One and one-half percent of skim milk and butterfat, respectively, in milk received at a pool plant from a cooperative association in its capacity as a handler pursuant to § 1046.8(c), except that if the handler operating such pool plant files notice with the market administrator on or before the date he submits his monthly report applicable to such milk pursuant to § 1046.30 that he is purchasing such milk on the basis of weights determined at the farm from farm bulk tank measurements, the applicable percentage shall be two percent; plus

(iii) One and one-half percent of skim milk and butterfat, respectively, in fluid milk products received at a pool plant in bulk (except bulk cream) as a transfer from other pool plants; plus

(iv) One and one-half percent of receipts of fluid milk products in bulk from an other order plant, exclusive of the quantity for which Class II utilization was requested by the operator of such plant and the handler; plus

(v) One and one-half percent of receipts of fluid milk products in bulk from unregulated supply plants, exclusive of the quantity for which Class II utilization was requested by the handler; less

(vi) One and one-half percent of skim milk and butterfat, respectively, in fluid milk products transferred in bulk (except bulk cream) from a pool plant to other plants; and plus

(vii) One-half of one percent of skim milk and butterfat, respectively, in producer milk received by a cooperative association in its capacity as a handler pursuant to § 1046.8(c), unless the exception provided in subdivision (ii) of this subparagraph applies; and

6. In § 1046.44, paragraphs (a) and (b) are revised to read as follows:

§ 1046.44 Transfers.

* * * * *

(a) At the utilization reported pursuant to § 1046.30 by the operator(s) of both plants, otherwise as Class I milk, if transferred or diverted by the operator of a pool plant or a cooperative association

in its capacity as a handler pursuant to § 1046.8(c) to another pool plant, subject in either event to the following conditions:

(1) The skim milk or butterfat so assigned to either class shall be limited to the amount thereof remaining in such class in the transferee plant after computations pursuant to § 1046.46(a)(8) and the corresponding step of § 1046.46(b);

(2) If the transferor plant received during the month other source milk to be allocated pursuant to § 1046.46(a)(3) and the corresponding step of § 1046.46(b), the skim milk and butterfat so transferred or diverted shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferor handler received during the month other source milk to be allocated pursuant to § 1046.46(a)(7) or (8) and the corresponding steps of § 1046.46(b), the skim milk and butterfat so transferred or diverted up to the total of such receipts shall not be classified as Class I milk to a greater extent than would be applicable to a like quantity of such other source milk received at the transferee plant;

(b) If a specified utilization of skim milk and butterfat transferred or diverted to a pool plant of another handler by a cooperative association in its capacity as a handler pursuant to § 1046.8(c) is not claimed by both handlers pursuant to paragraph (a) of this section, such skim milk and butterfat shall be classified pro rata to the respective amounts remaining in each class at the pool plant of the receiving handler after making the assignment pursuant to § 1046.46(a)(8) and the corresponding step of § 1046.46(b), and after assignment of milk for which specified classification has been claimed by handlers pursuant to paragraph (a) of this section.

* * * * *

(Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674)

Effective date: February 1, 1965.

Signed at Washington, D.C., on December 22, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 64–13324; Filed, Dec. 24, 1964; 8:48 a.m.]

Title 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

SUBCHAPTER H—VOLUNTARY INSPECTION AND CERTIFICATION SERVICE

PART 155—CERTIFIED PRODUCTS FOR DOGS, CATS, AND OTHER CARNIVORA; INSPECTION, CERTIFICATION, AND IDENTIFICATION AS TO CLASS, QUALITY, QUANTITY AND CONDITION

Miscellaneous Amendments

On October 21, 1964, there was published in the FEDERAL REGISTER (29 F.R. 14441) a notice with respect to proposed amendments to the regulations for inspection and certification of products for dogs, cats, and other carnivora (9 CFR Part 155). After due consideration of all relevant material submitted in connection with such notice and pursuant to the provisions of sections 203 and 205 of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1622, 1624), the regulations for inspection and certification of products for dogs, cats, and other carnivora are hereby amended in the following respects:

1. Paragraphs (p) and (q) are added to § 155.2 to read as follows:

§ 155.2 Terms defined.

When used in this part unless otherwise distinctly expressed or manifestly incompatible with the intent thereof:

* * * * *

(p) "Poultry" means any domesticated bird slaughtered in accordance with the Poultry Products Inspection Act, Public Law 85–172, 85th Congress, S. 1747, dated August 28, 1957 (21 U.S.C. 451 et seq.).

(q) "Poultry product" means any edible part of fresh poultry which have been slaughtered for human food and from which the blood, feathers, feet, head and viscera have been removed in accordance with rules and regulations promulgated by the Secretary of Agriculture.

2a. Section 155.29(a)(2), (b), and (c)(1) and (3) are amended to read as follows:

§ 155.29 Composition of certified product for dogs, cats, and other carnivora.

(a) *Composition of canned maintenance food.* * * *

(2) Not less than 30 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products, shall be used in the preparation of canned or semimoist certified maintenance food. Upon specific approval of the Director of the Division, combinations of the above specified ingredients may be used. The uncooked weight of the meat or animal food meat byproduct or both, or of the horse meat or animal food horse meat byproduct or both, or of the mule meat or animal food mule meat byproduct or both, or of the poultry products, or of the combinations thereof, shall be used in the calculation, and the percentage shall be obtained by relating this weight to the total weight of the certified maintenance food.

* * * * *

(b) *Composition of canned or fresh frozen certified supplemental animal foods.* (1) Certified animal protein supplement shall comply with the following requirements:

(i) Certified animal protein supplement shall contain not less than 95 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products. Upon specific approval of the Director of the Division, combinations of the above specified ingredients may be used;

(ii) Certified animal protein supplement shall have added thereto a sufficient amount of fresh ground bone or other acceptable agent to satisfy the requirements of the regulations promulgated under the Meat Inspection Act (34 Stat. 1260), as amended (21 U.S.C. 71 et seq.), and the Horse Meat Act (41 Stat. 241; 21 U.S.C. 96), in order to insure decharacterization of the product for human food purposes;

(iii) Certified animal protein supplement may contain not more than 3 percent wheat flour or other processing aid acceptable to the Director of the Division, which shall be of good quality, shall be free from insect infestation, and shall be otherwise fit for use as animal food;

(iv) Certified animal protein supplement shall contain not less than 15 percent protein; and

(v) Certified animal protein supplement shall contain not less than 3 percent fat.

(2) Certified pet food supplement shall comply with the following requirements:

(i) Certified pet food supplement shall contain not less than 50 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products. Upon specific approval of the Director of the Division, combinations of the above specified ingredients may be used;

(ii) Certified pet food supplement shall have added thereto a sufficient amount of fresh ground bone or other acceptable agent to satisfy the requirements of the regulations promulgated under the Meat Inspection Act (34 Stat. 1260), as amended (21 U.S.C. 71 et seq.), and the Horse Meat Act (41 Stat. 241; 21 U.S.C. 96), in order to insure decharacterization of the product for human food purposes;

(iii) Certified pet food supplement may contain various cereals, flours, vegetables, flavorings, seasonings and other processing aids acceptable to the Director of the Division which shall be of good quality, shall be free from discoloration, mold, smut, and insect infestation, and shall be otherwise fit for use as animal food;

(iv) Certified pet food supplement shall contain not less than 11 percent protein;

(v) Certified pet food supplement shall contain not less than 3 percent fat; and

(vi) Certified pet food supplement may not contain more than 74 percent moisture.

(c) *Composition of certified canned pet stew.* (1) Certified pet stew shall contain not less than 25 percent of meat or animal food meat byproduct or both, or of horse meat or animal food horse meat byproduct or both, or of mule meat or animal food mule meat byproduct or both, or of poultry products. Upon specific approval of the Director of the Division, combinations of the above specified ingredients may be used.

* * * * *

(3) Vegetables and grains and their derivatives used as ingredients of certified pet stews shall be of good quality, shall be free from discoloration, mold, smut, and insect infestation, and shall be otherwise fit for use as animal food.

* * * * *

2b. Subparagraphs (2), (4), (5), and (6) of paragraph (c) of § 155.29 are amended by adding the word "certified" before the word "pet" wherever the latter occurs in those subparagraphs.

(Sec. 203, 60 Stat. 1087, as amended, sec. 205, 60 Stat. 1090, as amended; 7 U.S.C. 1622, 1624; 19 F.R. 74, as amended)

Effective date. The foregoing amendments shall become effective upon publication in the FEDERAL REGISTER.

The amendments extend the voluntary animal food certification program by permitting the certification of canned and fresh frozen supplemental pet foods, and animal foods which contain poultry products, when such foods meet the requirements in Part 155, Title 9, Code of Federal Regulations. This action will probably make a greater variety of certified animal foods available to purchasers. Accordingly, it is found upon good cause under section 4(c) of the Administrative Procedure Act (5 U.S.C. 1003(c)), that the amendments may be made effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 22d day of December 1964.

GEORGE W. IRVING, Jr.,
Acting Administrator,
Agricultural Research Service.

[F.R. Doc. 64-13325; Filed, Dec. 24, 1964; 8:48 a.m.]

Title 13—BUSINESS CREDIT AND ASSISTANCE

Chapter I—Small Business Administration

[Revision 2, Amdt. 2]

PART 120—LOAN POLICY

Business Loans and Guarantees

The Small Business Administration Loan Policy Regulation, as revised in 28 F.R. 6675, and amended in 29 F.R. 2486, is hereby further amended by deleting in § 120.1(d)(10) all words following "investment" in the fifth line thereof. As so amended § 120.1(d)(10) shall provide in full as follows:

§ 120.1 Business loans and guarantees.

* * * * *

(d) * * *

(10) If the purpose of the financial assistance is to finance the acquisition, construction, improvement or operation of real property which is, or is to be, held primarily for sale or investment.

* * * * *

Effective date. This amendment shall be effective for all applicable loan applications filed on or after January 1, 1965.

Dated: December 17, 1964.

EUGENE P. FOLEY,
Administrator.

[F.R. Doc. 64-13276; Filed, Dec. 24, 1964; 8:46 a.m.]

Title 29—LABOR

Subtitle A—Office of the Secretary of Labor

PART 50—NEIGHBORHOOD YOUTH CORPS PROJECTS FOR UNEMPLOYED YOUTHS

Interim regulations of the Secretary of Labor and the Director of the Office of Economic Opportunity implementing Title I, Part B of the Economic Opportunity Act of 1964.

Pursuant to authority contained in section 602(n) of the Economic Opportunity Act of 1964 (78 Stat. 508) and Delegation No. 1-64 (29 F.R. 14764 (1964)), the Secretary of Labor and the Director of the Office of Economic Opportunity hereby amend Title 29 of the Code of Federal Regulations by establishing a new Part 50 to read as set forth below.

The provisions of section 4 of the Administrative Procedure Act (5 U.S.C. 1003) which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these rules involve matters that relate only to public benefits. We do not believe such procedures will serve a useful purpose here. Accordingly, these amendments shall become effective immediately.

Subpart A—General

Sec.
50.1 Definitions.

Subpart B—Enrollees

50.10 Determination of youth's employment and training needs.
50.11 Selection and referral of enrollees.
50.12 Enrollment in other programs.
50.13 Maximum duration of youth's enrollment.
50.14 Enrollee status.
50.15 Proof of age.

Subpart C—Neighborhood Youth Corps Projects

50.20 Types of projects.
50.21 Work-training agreements.
50.22 Standards for a project.
50.23 Work, training and education.
50.24 Supervision, counseling and job placement.
50.25 Community action programs.
50.26 Safety and workmen's compensation.
50.27 Work rules.
50.28 Length of project.
50.29 Non-discrimination.

Subpart D—Financing Neighborhood Youth Corps Projects

50.30 Effective period of Title I, Part B of the Act.
50.31 Allowable costs.
50.32 Limitations on Federal assistance.

Subpart E—Evaluation, Records and Disclosure

50.40 Evaluation of projects.
50.41 Records, reports and disclosure of information.

Subpart F—Disputes and Review

50.50 Disputes.
50.51 Review by Secretary.

AUTHORITY: The provisions of this Part 50 issued under sec. 602, 78 Stat. 528 (Pub. Law 88-452). Delegation of Director of Office of Economic Opportunity, 29 F.R. 14764.

Subpart A—General

§ 50.1 Definitions.

As used in this part, unless the context clearly indicates otherwise, the term:

(a) "Act" means the Economic Opportunity Act of 1964.

(b) "Contribution in kind" means a contribution, in lieu of cash, of any item or service the purchase of which would be an allowable cost, including but not limited to the use of plant and equipment fairly evaluated.

(c) "Enrollee" means a youth employed in a project.

(d) "Low-income family" means any family whose income is insufficient to provide it with basic needs.

(e) "Neighborhood Youth Corps" means the agency established by the Secretary within the Department of Labor to administer Title I, Part B of the Act.

(f) "Permanent resident of the United States" means a person whose principal, actual dwelling place is within a State or any other place, continental or insular, including the Trust Territory of the Pacific Islands, which is subject to the jurisdiction of the United States and who is not a nonimmigrant alien as defined in section 101(a)(15) of the Immigration and Nationality Act.

(g) "Private nonprofit organization" means any institution, organization, corporation, or agency no part of whose earnings inures or lawfully may inure directly or indirectly to the benefit of any private member, shareholder, or other individual, other than as reasonable compensation for services rendered as an officer or employee, or as goods and services received as a bona fide part of its operations consistent with the purposes for which it was established. It shall be prima facie evidence of such status that an organization is organized as a nonprofit organization under Federal or State law, or is exempt from taxation under section 501(a) of the Internal Revenue Code of 1954.

(h) "Project" means a Neighborhood Youth Corps project, approved by the Secretary pursuant to section 113 of the Act, combining supervised employment of youth for remuneration and, as appropriate, related training, education and other essential services.

(i) "School" means an elementary or secondary school or its equivalent.

(j) "Secretary" means the Secretary of Labor, United States Department of Labor, or his authorized representatives.

(k) "Sponsor" means the State or local public agency, including Indian Tribal groups, or private nonprofit organization (other than political parties) with

which the Secretary has entered into a work-training agreement to undertake a project.

(l) "State" means a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(m) "State agency" means the agency of the State which administers the employment security program.

(n) "Unemployed youth" means a youth who at the time of his selection for a project is not working regularly for remuneration in excess of 20 hours a week.

(o) "Wage" means money payments for services performed.

(p) "Youth" means a person, man or woman, who has attained age 16 but not age 22.

Subpart B—Enrollees

§ 50.10 Determination of a youth's employment and training needs.

As a basis for the selection of a youth for a project, the Secretary shall first determine through the State agency or through such other public agency or private nonprofit organization, as the Secretary may designate, the employment and training needs of each youth with regard to the youth's interests and potentialities. This determination shall be based on a comprehensive evaluation of the individual's achievements, aptitudes and interests, abilities, personal and social adjustments, work experience, health, personal traits, financial resources and other pertinent data adequate to form the basis for (a) establishing that such person is in need of work-training experience to increase such person's employability or to enable such person to resume or continue in school and (b) selecting an employment objective commensurate with the individual's capacities and limitations. This may be done through interviewing, testing, counseling, and a medical examination as necessary. All prospective enrollees, prior to their selection for work-training, shall be encouraged to continue or resume school attendance where that is appropriate to their needs.

§ 50.11 Selection and referral of enrollees.

(a) A youth may be selected for a project which is commensurate with the individual's work-training needs, if at the time of selection, he or she is unemployed and is—

(1) Out of school and not planning to return to school, but needs work experience in order to prepare for skill training or for a job, or

(2) Out of school and needs paid work experience to resume school attendance, or

(3) In school, but needs paid work experience to continue in school, and

(4) A member of a low income family: *Provided,* That it shall be prima facie evidence that a family is a low-income family for purposes of this part if such family, without regard to State or local residence requirements, is eligible for receiving cash or other assistance on a needs basis under any public welfare program or from an approved private organization, and

(5) A permanent resident of the United States.

(b) The selection and referral of youths to projects shall be made by such public agencies, including the State agency and where appropriate the local school system, or such private nonprofit organizations, as the Secretary may designate.

§ 50.12 Enrollment in other programs.

(a) Where the circumstances warrant such action, a youth may be provided assistance from more than one of the programs available under Titles I and II of the Act and training programs under the Manpower Development and Training Act of 1962, as amended, and the Area Redevelopment Act. Such assistance may include, but is not limited to the following:

(1) A youth formerly enrolled in the Job Corps under the Act is eligible for enrollment in a project where enrollment in such project is for the purpose of enabling the youth to resume or maintain school attendance.

(2) A youth formerly enrolled in a program comprising only counseling and related services under the Manpower Development and Training Act is eligible for enrollment in a project.

(b) A youth formerly enrolled in a regular Institutional or On-the-Job Training program under the Manpower Development and Training Act may not be enrolled in a project: *Provided however,* That with the permission of the Secretary a youth may be enrolled in a project which is for the purpose of enabling the youth to resume or maintain school attendance.

§ 50.13 Maximum duration of youth's enrollment.

(a) A youth's enrollment in one or more projects designed to enable the youth to maintain school attendance shall not exceed the period necessary to enable said youth to complete high school.

(b) The period of enrollment of all other youths shall not exceed two years.

(c) In no event shall any youth's period of enrollment extend beyond the day immediately preceding the youth's twenty-second birthday.

§ 50.14 Enrollee status.

An enrollee in a project shall not be deemed an employee of the Federal government, and shall not be subject to the provisions of laws relating to Federal employees, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

§ 50.15 Proof of age.

Prior to enrollment in a project, each youth shall submit satisfactory evidence of his or her age. Such evidence of age may consist of:

(a) A birth certificate,

(b) A baptismal record,

(c) A bona fide record of the date and place of the youth's birth kept in the Bible in which the records of the births in the family of the child are preserved,

(d) A parent's, guardian's, or custodian's affidavit of age accompanied by a record of the age as given in the register of the school first attended by the youth, if obtainable, or in the earliest available school census, or

(e) Such other documentary evidence satisfactory to the Secretary.

Subpart C—Neighborhood Youth Corps Projects

§ 50.20 Types of projects.

A project shall be designed to serve the employment needs of one or more of the groups of youth identified in § 50.11(a), and accordingly, may be either (a) an out-of-school project providing suitable employment for youths who need work experience and assistance in order to prepare for skill training or to increase their employability, or (b) an in-school project providing suitable employment for youths who need work experience and financial assistance to resume or maintain school attendance.

§ 50.21 Work-training agreements.

A project shall be undertaken upon execution of an agreement between a sponsor and the Secretary, on the basis of detailed specifications which meet the requirements set forth in this subpart.

§ 50.22 Standards for a project.

No project shall be approved under this part unless the Secretary has first determined that:

(a) The project will enable enrollees to resume or maintain school attendance, or will increase their employability in fields in which the Secretary finds there is a reasonable expectation of suitable full-time employment;

(b) The project will not provide training in occupations where there is a continuing and substantial surplus of qualified workers available for employment in such occupations;

(c) The employment of the enrollees on the project will not result in the displacement of employed workers or impair existing contracts for services;

(d) The employment of the enrollees will permit or contribute to an undertaking or service in the public interest that would not otherwise be provided, or will contribute to the conservation, development, or management of the natural resources of the State or community or to the development, management or protection of State or community recreational areas;

(e) Enrollees in the project will be employed either on publicly owned and operated facilities or projects, or on local projects sponsored by private nonprofit organizations, other than projects involving the construction, operation, or maintenance of so much of any facility used or to be used for sectarian instruction or as a place for religious worship;

(f) The project provides for standards and procedures which meet his approval for the selection of enrollees, which shall include, where appropriate, full coordination and cooperation with local and other authorities to encourage students to resume or maintain school attendance;

(g) The enrollees' rates of pay and other conditions of employment are appropriate and reasonable in the light of such factors as the type of work performed, the geographical region and the proficiency of the enrollee, and comply with all applicable Federal, State and local laws, rules and regulations dealing with or relating to employment conditions: *Provided,* That except as may be required by applicable Federal, State, or local law, starting rates of pay shall be set slightly below, and for enrollees performing their duties satisfactorily may be increased at appropriate intervals up to the prevailing entrance wage rate for inexperienced workers engaged in similar occupations in the labor area where the work will be performed and that, consistent with this section, the sponsor may set a uniform wage rate for all enrollees on the project: *Provided further,* That no enrollee shall be employed for more than 40 hours per week; and

(h) The project provides for work and, as appropriate, training, education, and other services in accordance with this subpart.

§ 50.23 Work, training and education.

(a) Each project shall furnish work for which the enrollee is paid wages: *Provided,* That enrollees under 18 years of age shall not be employed in any occupation which the Secretary, under section 3(l) of the Fair Labor Standards Act of 1938, as amended, has declared to be particularly hazardous for youth between the ages of 16 and 18 years. This work, in the case of an out-of-school project, shall be designed to increase the enrollee's employability in appropriate fields through the development of good work habits and attitudes and the acquisition of such skills as may be learned in the process of doing the work.

(b) Each project, in addition to the work provided in paragraph (a) of this section, shall provide, where necessary and as appropriate, supplementary training and remedial education. Accordingly, each project shall be coordinated to the maximum extent feasible with vocational training and educational services adapted to the special needs of enrollees in such project and sponsored by State or local educational agencies: *Provided, however,* That where such services are inadequate or unavailable, the Secretary may make provision for the enlargement, improvement, development, and coordination of such services with the cooperation of, or where appropriate pursuant to agreement with, the Secretary of Health, Education, and Welfare.

(c) In the development and approval of projects, priority shall be given to projects with high training potential.

(d) The sponsor shall provide enrollees instruction and training in safe work practices, such as proper lifting and handling of materials, working with handtools, and using personal protective equipment.

§ 50.24 Supervision, counseling and job placement.

(a) The sponsor shall provide competent work supervision of enrollees and such counseling and guidance as may be needed to assist enrollees in adjusting to the work situation and in planning their vocational goals.

(b) Enrollees in out-of-school projects shall be provided assistance in:

(1) Finding and developing post-project job opportunities;

(2) Referral, following completion of the project, for placement in suitable jobs or for further education or training; and

(3) Follow-up, as appropriate, to assist them in their adjustment on such jobs.

(c) The services referred to in paragraph (b) of this section shall be secured, wherever possible, through the State agency or other appropriate public agency.

§ 50.25 Community action programs.

Sponsors of projects shall assist, utilize and coordinate with, wherever practicable, community action programs authorized under Title II of the Act. In accordance with section 211 of the Act, preference shall be given, to the extent feasible, to a project proposal constituting a component of a community action program which has been approved pursuant to the provisions of Title II or, if not approved, whose approval is pending and is anticipated within the fiscal year.

§ 50.26 Safety and workmen's compensation.

(a) The sponsor shall provide safe conditions of work, including but not limited to safe equipment and machinery, personal protective equipment, safe transportation to and from the work site where provided, and fire prevention and protection.

(b) Acceptable workmen's compensation insurance which meets existing requirements under State law shall be provided for each enrollee and staff employee engaged on the project. Such insurance shall provide, notwithstanding the absence of such a requirement under State law, for the payment of medical, surgical, nursing, and hospital services, medical and surgical apparatus and appliances, and medicines which may be reasonably necessary to treat injury or disease arising out of and in the course of employment. Where the State law limits the liability of the employer in permanent total disability cases to a maximum dollar amount or to a specified period of time, such insurance shall provide benefits for the full period of such disability without regard to any maximum dollar limitation.

§ 50.27 Work rules.

(a) The sponsor shall establish rules, approved by the Secretary governing attendance, conduct, and grievances. Such rules shall set forth the grounds for suspension and termination of an enrollee. The enrollee shall be informed in writing of these rules, which, unless contrary to the purposes and policies of the Act, shall be consistent with any similar rules which are the subject of a collective bargaining contract covering these enrollees.

(b) Grievances of the enrollee which relate to the terms of the work-training agreement or the rules referred to in paragraph (a) of this section shall be resolved by the sponsor, or a duly appointed representative, and shall be subject to review by the Secretary upon request of the enrollee: *Provided however,* That grievances of an enrollee which relate to the terms of a work-training agreement or the rules referred to in paragraph (a) of this section and which are subject to processing under the grievance procedures of a collective bargaining contract covering the enrollees shall be processed in accordance with such procedures, consistent with the regulations in this part and the terms of the work-training agreement.

§ 50.28 Length of project.

Each project shall be for a period which is of sufficient duration to achieve its objective consistent with § 50.22(a), but shall not exceed the fiscal year in which the work-training agreement is executed, plus the following fiscal year, except that this shall not preclude the extension of the work-training agreement for subsequent periods.

§ 50.29 Non-discrimination.

(a) No person in the United States shall, on the grounds of race, creed, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance under Title I, Part B of the Act.

(b) In the administration of a project, the Sponsor shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin, and shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, creed, color, or national origin.

Subpart D—Financing Neighborhood Youth Corps Projects

§ 50.30 Effective period of Title I, Part B of the Act.

No commitment of funds shall be made pursuant to the authority conferred upon the Secretary under Title I, Part B of the Act after June 30, 1967, unless by Act of Congress the Act is extended beyond that date.

§ 50.31 Allowable costs.

(a) The allowable costs of a project are those costs determined by the Secretary to be allowable in accordance with Part I–15 of the Federal Procurement Regulations (41 CFR 1–15) particularly Subpart 1–15.3 of said part unless otherwise specified in the work-training agreement, and may include the direct costs of the project, plus such indirect costs as are incurred by the sponsor as a result of his undertaking the project: *Provided however,* That the total costs payable shall not exceed an estimated cost for the project which shall be specified in the work-training agreement: *Provided further,* That direct or indirect costs may not include cost of major construction or renovation.

(b) No project shall be undertaken on a "cost-plus-fee" basis.

§ 50.32 Limitations on Federal assistance.

(a) Except as provided in paragraph (b) of this section, Federal assistance to any project pursuant to this part shall not exceed 90 per centum of the costs of such project, including costs of administration, for any period prior to August 20, 1966, and shall not exceed 50 per centum of such costs for periods thereafter. Non-federal contributions may be in kind as defined in § 50.1.

(b) Federal assistance to a project may exceed 90 per centum of the costs of such project if the project is sponsored by an Indian tribe whose public facilities (including but not limited to schools, hospitals and parks and other recreational facilities) are owned by the Federal government or receive more than 75 per centum of their revenues from the Federal government.

Subpart E—Evaluation, Records, and Disclosure

§ 50.40 Evaluation and projects.

Pursuant to such standards and criteria as may be established by the Secretary, a continuing and systematic evaluation of the progress and results of a project shall be conducted by the Secretary for the purpose of determining overall effectiveness of projects. The Secretary may at all reasonable times have access to and the right to inspect the place of employment of enrollees in the project when necessary to evaluate the project or to determine compliance with the work-training agreement.

§ 50.41 Records, reports and disclosure of information.

(a) The sponsor shall maintain such records and make such reports as required by the Secretary for the purpose of administration of the Act. Such records shall be open for examination by the Secretary in accordance with the provisions of the work-training agreement.

(b) Disclosure of any information contained in the records of the project and secured from youths, sponsors, public agencies, or other persons or groups or organizations as an incident to the administration of the project, including selection of enrollees, shall be governed by the disclosure regulations promulgated by the Secretary. Each work-training agreement or other agreement entered into by the Secretary for the purpose of carrying out an activity under the Act shall contain a provision setting forth this requirement.

Subpart F—Disputes and Review

§ 50.50 Disputes.

Any dispute between the parties to a work-training agreement concerning a question of fact arising under the work-training agreement which is not disposed of by agreement shall be decided by an authorized representative of the Secretary designated for this purpose, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the sponsor.

§ 50.51 Review by the Secretary.

(a) The decision referred to in § 50.50 shall be final and conclusive unless within 30 days from the date of receipt of a copy of the decision, the sponsor mails or otherwise furnishes to the official rendering the decision a written appeal addressed to the Secretary of Labor, Washington, D.C. The decision of the Secretary shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, or capricious, or arbitrary, or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence: *Provided,* That the foregoing shall not preclude consideration of law questions, in connection with decisions provided for in § 50.50: *Provided further,* That nothing in this subpart shall be construed as making final the decision of any administrative official, representative, or board on a question of law. In connection with any appeal proceeding under this section, the sponsor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the sponsor shall proceed diligently with the performance of the work-training agreement and in accordance with the decision rendered under § 50.50.

(b) The Secretary may on his own initiative review any determination made under Title I, Part B of the Act where review is not otherwise provided for under the regulations in this part, and if upon such review he determines the action taken was inconsistent with the rules, regulations and procedures promulgated, he may require an appropriate modification of such determination or action.

Signed at Washington, D.C., this 18th day of December 1964.

W. WILLARD WIRTZ,
Secretary of Labor.

R. SARGENT SHRIVER,
Director, Office of Economic Opportunity.

[F.R. Doc. 64–13272; Filed, Dec. 24, 1964; 8:46 a.m.]

Title 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

PART 207—NAVIGATION REGULATIONS

Snohomish River, Wash.; Hampton Roads and Willoughby Bay, Va.

1. Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 499), § 203.805 is hereby amended revoking the third undesignated paragraph of (e) (5) governing the operation of the Northern Pacific Railway Co. and the Great Northern Railway Co. bridges across the Snohomish River at Snohomish, Wash., effective on publication in the FEDERAL REGISTER, since the Secretary of the Army has granted the owners permission to maintain the bridges in a fixed position, as follows:

§ 203.805 Snohomish River, Steamboat Slough, and Ebey Slough, Wash.; bridges.

* * * * *

(e) *Bridges where constant attendance of draw tenders is not required.* * * *

(5) The bridges to which this paragraph applies and the special regulations applicable in each case, are as follows:

* * * * *

Snohomish River; bridges of the Northern Pacific Railway Co. and the Great Northern Railway Co. at Snohomish. [Revoked]

* * * * *

[Regs., Dec. 9, 1964, 1502–32 (Snohomish River, Wash.)—ENGCW–ON] (Sec. 5, 28 Stat. 362; 33 U.S.C. 499)

2. Pursuant to the provisions of section 7 of the River and Harbor Act of August 8, 1917 (40 Stat. 266; 33 U.S.C. 1), § 207.156 governing the use of seaplane restricted and prohibited areas in Hampton Roads and Willoughby Bay, Norfolk, Va., is hereby amended with respect to paragraph (b) (1) and (2), to prohibit the public from swimming in these areas during seaplane operations, effective 30 days after publication in the FEDERAL REGISTER, as follows:

§ 207.156 Hampton Roads and Willoughby Bay, Norfolk, Va.; seaplane restricted and prohibited areas.

* * * * *

(b) *The regulations.* (1) Persons may not enter and vessels may not operate in the prohibited area except on authorization of the Commanding Officer, Naval Air Station, Norfolk, Va.

(2) Intent to conduct seaplane operations in the restricted area will be indicated by any or all of the following: Crashboats showing flashing lights, sounding sirens, or hailing by voice; illumination of seadrome markers and float lights; or "buzzing" by low-flying aircraft. Whenever any of the above-named signals are observed by persons and vessels in the restricted area, they shall carry out such instructions as may be given by Naval crashboat personnel, clear the area promptly, and remain clear until seaplane operations are terminated. Persons and vessels shall give seaplanes the right-of-way in the restricted area.

* * * * *

[Regs., Sept. 11, 1964, 1507–32 (Hampton Roads-Willoughby Bay, Va.)—ENGCW–ON] (Sec. 7, 40 Stat. 266; 33 U.S.C. 1)

J. C. LAMBERT,
Major General, U.S. Army,
The Adjutant General.

[F.R. Doc. 64–13262; Filed, Dec. 24, 1964; 8:45 a.m.]

Title 43—PUBLIC LANDS: INTERIOR

Chapter II—Bureau of Land Management, Department of the Interior

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 3516]

[Fairbanks 010351]

[Anchorage 053359]

ALASKA

Partial Revocation of Certain Withdrawal Orders and Executive Order of January 7, 1903 (St. Lawrence Island)

By virtue of the authority vested in the President by section 2380 of the Revised Statutes (43 U.S.C. 711), and pursuant to Executive Order No. 10355 of May 26, 1952 (17 F.R. 4831), and by virtue of the authority contained in section 4 of the Act of May 24, 1928 (45 Stat. 729; 49 U.S.C. 214), it is ordered as follows:

1. The Departmental orders of March 17, 1941, and October 10, 1942, and Public Land Order No. 751 of August 29, 1951, so far as they withdrew the following-described lands for an air navigation site and for townsite purposes are hereby revoked:

SEWARD MERIDIAN

T. 5 N., R. 11 W.,
Sec. 5, lots 1 to 5 incl., and 12 to 19, incl.;
Sec. 6, lots 11 and 30, and NE¼NE¼NE¼;
U.S. Survey No. 2970A and No. 3025A, in secs. 5 and 6.
T. 6 N., R. 11 W.,
Sec. 28, W½;
Sec. 29, SE¼;
Sec. 32;
Sec. 33, W½.

The areas described aggregate 1,716.48 acres of nonpublic lands.

2. The Executive Order of January 7, 1903, withdrawing St. Lawrence Island as a reindeer station, is hereby revoked so far as it affects United States Survey No. 3728, containing 97.78 acres of nonpublic land.

JOHN A. CARVER, Jr.,
Assistant Secretary of the Interior.

DECEMBER 21, 1964.

[F.R. Doc. 64-13275; Filed, Dec. 24, 1964; 8:46 a.m.]

Title 47—TELECOMMUNICATION

Chapter I—Federal Communications Commission

[Docket Nos. 14229, 15096; FCC 64-1166 corrected]

PART 73—RADIO BROADCAST SERVICES

Miscellaneous Amendments

In the matter of fostering expanded use of UHF television channels, Docket No. 14229; in the matter of amendment of § 73.606 table of assignments, television broadcast stations (Phoenix, Ariz.), RM-466; in the matter of amendment of § 73.606 table of assignments, television broadcast stations (Phoenix, Ariz.), Docket No. 15096, RM-382, RM-409; in the matter of amendment of § 73.606 table of assignments, television broadcast stations (Pittsburg, Cotati, and Concord, Calif.), RM-477; in the matter of amendment of § 73.606 table of assignments, television broadcast stations (Fort Dodge, Iowa), RM-610; in the matter of amendment of § 73.606 table of assignments, television broadcast stations, Greeneville, Tenn., RM-629.

Supplement No. 2 to the Third Report and Order. 1. Pursuant to the policy announced in the Third Report and Order in the above-entitled matter, in which the Commission said that it would attempt to provide UHF channels in selected places where prospective applicants have stated that they are prepared to proceed promptly with the construction and operation of new UHF television broadcast stations, if authorized, as soon as channels become available, we have completed a study of certain cities and have found that assignments may be made without significantly affecting the development of a national assignment plan. These assignments are discussed in the following paragraphs.

FORT DODGE, IOWA

2. Cowles Magazines and Broadcasting, Inc. (Cowles), licensee of KRNT-TV, Channel 8, Des Moines, Iowa, has operated a UHF television translator, K70CL, in Fort Dodge, Iowa, since May 16, 1962. Although Channel 70 is not assigned to Fort Dodge, its use under the UHF television translator rules requires that it meet all minimum geographic spacings with other UHF assignments. K70CL retransmits the signals of KRNT-TV to the Fort Dodge area with maximum effective radiated power of approximately 615 watts from a bi-directional antenna mounted at the 590 foot level of the KQTV tower. KQTV operates on Channel 21 in Fort Dodge and is licensed to Northwest TV Co.

3. On August 30, 1963, Cowles filed an application for authority to increase the power of K70CL by employing a 1 kilowatt transmitter and requested a waiver of § 74.735 (formerly § 4.735) which limits the transmitter power of UHF translators to 100 watts. KQTV supported the request for increased power with a statement that the people of Fort Dodge and the surrounding area would obtain better service and more use of all-channel TV receivers if K70CL employed higher power. There is some evidence which indicates that a second UHF service tends to increase the potential UHF audience and results in increased viewing of both stations. In view of our action herein with respect to Cowles' later application for regular assignment of Channel 70 to Fort Dodge, we need not pass on the requested waiver of the translator rules, and this application is dismissed.

4. On June 1, 1964, Cowles filed a petition (RM-610) to assign Channel 70 to Fort Dodge so that it could apply for a new UHF television broadcast station to operate as a satellite of KRNT-TV. Channel 70 may be assigned to Fort Dodge without any other change in the present Table of Assignments in § 73.606 of the rules. The assignment will conflict with the NAEB proposal to assign Channel 70 to Carroll, Iowa. However, there is considerable flexibility in the upper UHF channels in this area of the country and a suitable replacement could be found if the Commission should decide to adopt the NAEB proposal.

GREENEVILLE, TENN.

5. On July 1, 1964, the Commission received a petition from R. C. Bird, Jr. and Thomas G. Hull, requesting the assignment of Channel 25 or Channel 44 to Greeneville, Tenn. The petition stated that the parties are prepared to proceed promptly with the construction and operation of a new UHF television broadcast station in Greeneville, if a channel is made available and they are awarded a construction permit. On July 8, 1964, the Commission adopted the Third Report and Order in Docket No. 14229, assigning Channel 18 to Linville, N.C. Channel 25 at Greeneville will not meet the required 60 mile minimum separation to Channel 18 at Linville. In a letter dated July 27, 1964, the petitioner noted this conflict and requested that we limit our consideration to the assignment of Channel 44 to Greeneville.

6. Channel 44 may be assigned to Greeneville, Tenn., without any other change in the Table of Assignments in § 73.606 of our rules. The assignment conflicts with our proposal to assign Channel 44 to Johnson City, Tenn. However, the use of the channel at Greeneville will provide service to much of the area that would be served if the channel were used at Johnson City and in any event we do not anticipate too much difficulty in providing a suitable replacement in Johnson City if this is found to be desirable. The assignment also falls a few miles short to the NAEB proposed assignment of Channel 44 to Blacksburg, Va. Since Blacksburg is not in a particularly congested assignment area, we do not anticipate any difficulty in finding a suitable replacement there if the Commission should decide to adopt the NAEB proposal.

MURFREESBORO, TENN.

7. William R. Vogel of Murfreesboro, Tenn., filed a comment in Docket No. 14229, requesting the assignment of Channel 18 to Murfreesboro and stated that he plans to file an application for authority to construct and operate a new UHF television at Murfreesboro as soon as a channel becomes available. An engineering study accompanying the comment showed that the assignment would require deletion of Channel 18 at Chatsworth, Ga., where it is reserved for educational use. The comment proposed the substitution of Channel 14 at Chatsworth by moving it from Chattanooga, Tenn. Mr. Vogel further stated that Murfreesboro receives TV service from four VHF stations in Nashville, approximately 30 miles away and in order to successfully pioneer local TV service for Murfreesboro, he needs a

channel in the lower part of the UHF band. There is no TV channel assigned to Murfreesboro in the present Table of Assignments in Section 73.606 of our rules. Nashville is assigned Channels 2, 4, 5, 8, 30 and 36 with Channel 2 reserved for educational use.

8. On August 20, 1964, Mr. Vogel filed a petition requesting that since a construction permit had been issued for Channel 18 in Chatsworth, we consider in lieu of Channel 18, the assignment of Channel 30 to Murfreesboro. This would, in effect, amount to a shift of Channel 30 from Nashville to Murfreesboro. The Commission proposed, in Docket No. 14229, to assign Channels 52 and 73 to Murfreesboro with Channel 52 reserved for educational use. We also proposed to retain Channels 30 and 36 in Nashville and to add Channel 70 as a second educational reservation. NAEB proposed to assign Channels 20 and 30 to Murfreesboro with Channel 20 reserved for educational use and to replace Channels 30 and 36 in Nashville with Channels 28 and 39, and to reserve Channel 39 for educational use.

9. Channel 30 may be moved from Nashville to Murfreesboro with no other change in the present Table of Assignments in § 73.606 of the rules. There are no pending applications for Channel 30 in Nashville and we are not aware of any current interest in the establishment of a UHF operation on that channel in Nashville. No reply comments were filed opposing the NAEB proposal to move the channel to Murfreesboro. The Metropolitan Board of Education, licensee of WDCN–TV which operates on Channel 2 in Nashville, filed a comment supporting the NAEB proposal to assign and reserve Channel 39 in Nashville. The prospect of early inauguration of UHF television broadcast service on Channel 30 at Murfreesboro warrants favorable action on the request of Mr. Vogel. While this conflicts with the original proposal of the Commission, NAEB has shown that suitable replacement channels can be found for Nashville if necessary. Under the policy announced in the Third Report and Order in the subject proceeding, we are taking early action only with respect to those channels where prospective applicants have stated that they are prepared to proceed promptly with the construction and operation of new UHF stations if awarded a construction permit. Therefore, we are not making any decision at this time as to other channel assignments in Nashville and Murfreesboro.

PITTSBURG, CALIF.

10. On February 15, 1963, Channel 16 was moved from Pittsburg, Calif., to Cotati, Calif., and reserved for educational use, upon petition of the Sonoma State College Foundation, Inc. In the rule making proceeding that led to this action, no opposing comments were filed. On September 3, 1963, Jerry Bassett, Inc. filed a petition (RM–477) requesting the return of Channel 16 to Contra Costa County, specifically to Concord, Calif. The petitioner stated that at the time Sonoma College asked for the shift of Channel 16, it was not legally organized or otherwise fully positioned to apply for Channel 16 in Pittsburg, hence no opposition was filed to the proposed move. However, it was in the process of organizing and planning to apply for a TV channel in Contra Costa County and the removal of the channel dealt a harsh blow to its plans. The petitioner further stated that it was now prepared to apply for authority to construct and operate a new UHF television station on Channel 16 whenever the channel was moved back to Contra Costa County.

11. The petition of Jerry Bassett, Inc., along with a number of others was caught up in the proceeding in Docket No. 14229 which looked toward an overall revision of UHF assignments in the United States. In its comments filed in Docket No. 14229, we were again urged by Jerry Bassett to return Channel 16 to Concord since Sonoma College had made no move to utilize the assignment at Cotati. Comments were filed by a number of other groups and individuals in Contra Costa County, urging the return of the channel so that local TV service could be provided by Bassett. Among these were The Democratic Central Committee of Contra Costa County, Concord Area Chamber of Commerce, the City Council of the City of Pittsburg, the Superintendent, San Ramon School District, Vacaville Chamber of Commerce and Agriculture, Assemblyman, Jerome R. Waldie, of the California Legislature, Rio Vista Chamber of Commerce, Walnut Creek Chamber of Commerce, as well as a number of civic and fraternal orders and local businessmen. Sonoma State College Foundation, Inc. filed comments opposing the move of Channel 16 from Cotati. They referred to the Opposition to the Petition for Rule Making which they had filed, stating that the arguments against the return of Channel 16 to Pittsburg were fully documented therein. The arguments in brief, were that Contra Costa County receives excellent TV service from stations in the San Francisco Bay area, that an educational channel is needed for Sonoma County and adjacent Napa County because the only existing educational station in the area, KQED, San Francisco, provides neither direct instruction in specific college courses nor related supplementary information programming. They further pointed out that since the filing of their opposition, Jerry Bassett, Inc. had filed an application for a construction permit at Walnut Creek, Calif., on Channel 26 and that a transmitter located at Walnut Creek would serve the area that would be served by Channel 16 at Concord or Pittsburg. The Sonoma County public schools, Sonoma County Board of Education, California State Colleges and Santa Rosa Junior College filed letters supporting the opposition of Sonoma State College Foundation, Inc. In reply comments, Jerry Bassett, Inc. stated that the restoration of Channel 16 to Pittsburg would eliminate the need for a hearing involving another applicant for Channel 26 and would result in earlier inauguration of new UHF service in Contra Costa County.

12. While it is true that Sonoma State College Foundation, Inc. has made little progress toward the inauguration of educational TV service, we are not disposed to delete the educational reservation at this time, particularly since we are able to provide a suitable substitute channel at Pittsburg. Channel 42 may be shifted from Stockton to Pittsburg without other changes in the present Table of Assignments. Stockton is currently assigned VHF Channel 12 as well as UHF Channels 36, 42 and 64. Channel 42 is reserved for educational use. The Television Advisory Committee of the State of California, in comments filed in Docket No. 14229, stated that a full-scale study of the needs of the State for educational channels has not yet been made but the general objective will be to provide statewide coverage. They also foresee the need for additional channels but specific details are to be worked out later. The transfer of Channel 42 from Stockton to Pittsburg will not significantly impair our ability to provide the State of California with a fair and equitable share of available UHF channels and distribute them so as to provide for the future growth of both educational and commercial TV service. NAEB proposed to assign Channel 42 to Fairfield, California, approximately 20 miles from Pittsburg, as an unreserved channel. Therefore, the assignment to Pittsburg does not conflict with the NAEB proposal.

PHOENIX, ARIZ.

13. On November 5, 1962, Dwight Harkins filed a petition (RM–382) to assign Channel 20 to Phoenix, Ariz., so that an application for a subscription TV operation could be filed. On January 23, 1963, we received a petition from Power Television Incorporated (RM–409) to assign Channel 26 to Phoenix. Power proposed to construct and operate a conventional TV broadcast station on Channel 26. The two petitions were incorporated in a Notice of Proposed Rule Making (Docket 15096) issued by the Commission on June 6, 1963.

14. When the Commission initiated the proposal in Docket No. 14229 for an overall revision of the Table of Assignments for UHF channels, on October 24, 1963, this outstanding proceeding along with several others were incorporated by reference and the Table of Assignments proposed by the Commission included the assignment of Channels 20 and 26 to Phoenix. On July 25, 1963, e pluribus unum enterprises had filed a petition (RM–466) to also assign Channel 14 to Phoenix. However, the proposed Table of Assignments that was to be presented to the Commission had been completed and inclusion of the e pluribus unum enterprises request at that late date would have required a revision. Therefore, the petition was incorporated into Docket No. 14229 so that it could be considered before a final Table was adopted.

15. Except for one letter from a citizen opposing pay-TV and one letter from a citizen supporting pay-TV, the only comment filed in Docket No. 15096 was a vigorous opposition by Meredith Broadcasting Company, licensee of KPHO and KPHO–TV, in Phoenix. Meredith argued that Phoenix is served by one noncommercial educational TV station, four commercial TV stations, three of which

are affiliated with the three national TV networks and that its station operates as an independent station. The size of the Phoenix market does not warrant the establishment of even a fifth TV station, much less a fifth and sixth, and all of the existing station and its station in particular will be adversely affected by the added competition. It is Meredith's position that the petitioners have made no adequate showing of need for the additional service and that in the absence of a specific and detailed showing, the Commission cannot properly weigh the adverse effect of the added competition against the needs of the area. Similar arguments were advanced by Meredith in its opposition to the petition of e pluribus unum enterprises and in comments filed in Docket No. 14229.

16. Comments filed in Docket No. 14229 by Richard A. Clark, a prospective applicant for a new UHF station in Phoenix; Welch, Mott & Morgan representing a local group in Phoenix which is interested in applying for a new UHF television station in Phoenix; and e pluribus unum enterprises, endorsed the proposal to add UHF channels to Phoenix. KTAR Broadcasting Company, licensee of KTAR–TV, Channel 12, Mesa, Ariz., suggested that instead of assigning additional UHF channels to Phoenix that we assign Channel 12 to Phoenix and that we use the proposed UHF channels to provide local outlets in Mesa and Glendale. Clark points to the phenomenal growth of Phoenix and the surrounding area, cites figures for the retail sales and effective buying income, and lists the steadily increasing broadcast revenue figures to show that additional channels are needed and are likely to be used. Welch, Mott & Morgan use similar arguments and point to the fact that the healthy economic climate is not the result of a single specialized industry but covers a broad spectrum and is therefore likely to continue. The three network affiliated stations have little time to devote to local interests and the single local independent station cannot adequately serve all of the varied local interests of the Phoenix market. The principal argument of e pluribus unum enterprises is that there is a pressing need for a TV station to serve the large Spanish-speaking population of Phoenix and its environs. The station it proposes would be programmed largely in the Spanish language and would provide service to an estimated 100,000 people who are inadequately served by the local TV stations because of the language difficulty. The object of such broadcasts would be to help the Spanish-speaking people make the transition to American life and society without losing the major elements of their own culture and heritage. Some English language broadcasts would be made but they too would be directed to the Spanish-speaking population to further that objective.

17. On April 3, 1964, the attorneys for Power Television Incorporated notified the Commission by letter that they were no longer interested in this proceeding and requested that their petition for rule making (RM–409) be dismissed. On August 4, 1964, e pluribus unum enterprises filed a request that we take final action with respect to their petition for the assignment of Channel 14 to Phoenix, stating that it stands ready to prepare and file an application for authority to construct a new UHF television station in Phoenix and that it will do so promptly when the requested assignment is made.

18. Channel 14 may be assigned to Phoenix under the current Table of Assignments in Section 73.606 of our rules, by deleting Channel 14 from Holbrook, Ariz. While the petitioner suggested replacing Channel 14 with Channel 19 at Holbrook, there is no immediate prospect of use of a UHF channel in Holbrook and we would prefer to complete the overall assignment plan before deciding upon a replacement. For the channels involved, the FCC proposal in Docket No. 14229 is identical with the present Table and Channel 14 may be assigned to Phoenix with the same change. The assignment of Channel 14 to Phoenix conflicts with the NAEB overall proposal which includes the assignment of Channel 14 to Winslow, Ariz., as an educational reservation and the assignment of Channels 15, 21, and 27 to Phoenix, with Channel 15 reserved for educational use. By adding Channel 14 to the outstanding proposal in Docket No. 14229 to add Channels 20 and 26 to Phoenix, we can closely parallel the NAEB proposal to assign Channels 15, 21, and 27 to Phoenix. In view of the specific requests for Channels 14 and 20 by parties who have indicated that they are prepared to proceed promptly with applications we believe that the requirement for a second educational channel in Phoenix can be satisfied by reserving Channel 26 for educational use. It should be noted that the addition of Channel 14 to Phoenix requires the concurrence of the Mexican Government under the terms of the United States-Mexican TV Agreement. The proposal to add Channels 20 and 26 has already been accepted. An examination of the assignment pattern in the border area shows no reason to anticipate an unfavorable response from Mexico.

Conclusion

19. In view of the representations made by the various petitioners which are discussed in the preceding paragraphs, that they are prepared to proceed promptly with the inauguration of new UHF television broadcast service as soon as suitable channels are made available and if they are awarded construction permits to do so, the adoption of the described changes in the Table of Assignments for UHF channels will assist materially in achieving the objective of Docket No. 14229, i.e., the expanded use of UHF channels, and is therefore in the public interest. The all-channel TV receiver legislation came into force on May 1 of this year and the number of such receivers in the hands of the public is increasing daily. We have a responsibility to eliminate any unnecessary delay in the inauguration of new UHF service so that service may be provided to the public on these channels. The action taken herein will provide channels for which there is an immediate need.

20. Under the authority contained in sections 4(i), 303, and 307(b) of the Communications Act of 1934, as amended: *It is ordered*, That effective January 25, 1965, § 73.606 of the Commission rules is amended insofar as the communities named are concerned, to read as follows:

City	Channel No.
Pittsburg, Calif.	42
Stockton, Calif.	13+, 36, 64
Fort Dodge, Iowa	21, 70
Greeneville, Tenn.	44−
Murfreesboro, Tenn.	30+
Nashville, Tenn.	*2−, 4+, 5, 8+, 36+
Phoenix, Ariz.	3+, 5−, *8+, 10−, 14−, 20, *26+

Delete the listing for Holbrook, Arizona.

Frequency assignments on Channels 14–83 inclusive are subject to change in accordance with the final outcome of Docket No. 14229. However, the Commission will endeavor to avoid changes in channel assignments where construction has been authorized and has been completed to a point where a change in channel assignment would result in substantial additional expense to the licensee or permittee. Lack of interest in implementing new UHF channel assignments adopted prior to the development of a revised over-all national assignment plan for UHF channels, may result in deletion of the assignments from the final Table.

(Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154. Interpret or apply secs. 303, 307, 48 Stat. 1082, 1083; 47 U.S.C. 303, 307)

Adopted: December 16, 1964.

Released: December 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64–13311; Filed, Dec. 24, 1964; 8:46 a.m.]

PART 89—PUBLIC SAFETY RADIO SERVICES

Frequencies; Correction

The Commission's Order of December 14, 1964 (Mimeo 60149, 29 F.R. 18057) in the above-entitled matter is corrected as follows:

Under Instruction number 1 § 89.101 (i) (9) is corrected to read as follows:

§ 89.101 Frequencies.

* * * * *

(i) * * *

(9) Authorizations in this band are subject to the condition that no harmful interference is caused to the maritime radionavigation service or to Government services.

* * * * *

Released: December 21, 1964.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] BEN F. WAPLE,
Secretary.

[F.R. Doc. 64–13312; Filed, Dec. 24, 1964; 8:47 a.m.]

Title 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[No. 32153]

PART 10—UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

At a session of the Interstate Commerce Commission, division 2, held at its office in Washington, D.C., on the 17th day of December A.D. 1964.

The Commission having under consideration a notice of proposed rule making published in the FEDERAL REGISTER on November 19, 1964 (29 F.R. 15539) which proposed amendments of the Uniform System of Accounts for Railroad Companies pertaining to property retired from service, which property previously was subject to amortization accounting, and due consideration having been given to the responses pursuant to said notice and all other aspects of this matter;

It is ordered, That the amendments of the Uniform System of Accounts for Railroad Companies (49 CFR Part 10), which amendments appear below and made a part hereof, shall become effective January 1, 1965; and

It is further ordered, That notice of this order shall be given to railroad companies hereby affected and to the general public by depositing a copy of said order in the Office of the Secretary of the Commission in Washington, D.C., and by filing the order with the Director, Office of the Federal Register.

By the Commission, division 2.

[SEAL] HAROLD D. McCOY, *Secretary.*

ITEM NO. 1. EQUIPMENT

Account 330, Retirements—Equipment. In the text of this account eliminate paragraph (a) pertaining to equipment previously subject to amortization accounting and substitute therefor the following revised paragraph (a); also add new paragraph (b) set forth below and change present paragraph (b) to paragraph (c):

330 Retirements; equipment.

(a) When equipment previously subject to amortization accounting (pursuant to rules in effect during the period 1941–1951 consistent with section 124. "Amortization deductions," of the Internal Revenue Code) is retired the difference between (1) the service value (ledger value less value of salvage and insurance recovered) thereof, and (2) the balance in account 736, "Amortization of defense projects—Road and equipment," after appropriate adjustment for any depreciation accrued thereon, shall be included in this account, except for a difference, material in amount, as covered by paragraph (b) of this account.

(b) When the difference referred to in paragraph (a) of this account or the aggregate of all such differences for retirements is so material that inclusion in this account would distort and impair the significance of net income for the year the amount shall be credited to retained income account 606, "Other credits to retained income." (See General Instructions 1–2(d).)

* * * * *

ITEM NO. 2. ROAD PROPERTY

Account 267, Retirements—Road. In the text of this account eliminate paragraph (b), pertaining to road property previously subject to amortization accounting; add the following revised paragraph (b); also add new paragraph (c) set forth below and change present paragraph (c) to paragraph (d). (Retain unchanged present paragraph (a) and the Note in this account.)

267 Retirements; road.

* * * * *

(b) When road property previously subject to amortization accounting (pursuant to rules in effect during the period 1941–1951 consistent with section 124, "Amortization deductions," of the Internal Revenue Code) is retired the difference between (1) the service value (ledger value less salvage value and insurance recovered) thereof, and (2) the balance in account 736, "Amortization of defense projects—Road and equipment," after appropriate adjustment for any depreciation accrued thereon, shall be included in this account, except for a difference, material in amount, as covered by paragraph (c) of this account.

(c) When the difference referred to in paragraph (b) of this account or the aggregate of all such differences for retirements is so material that inclusion in this account would distort and impair the significance of net income for the year the amount shall be credited to retained income account 606, "Other credits to retained income." (See General Instructions 1–2(d).)

* * * * *

(Sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

[F.R. Doc. 64–13316; Filed, Dec. 24, 1964; 8:47 a.m.]

PART 95—CAR SERVICE

[Rev. S.O. No. 946; Amdt. 1]

St. Louis-San Francisco Railway Company Authorized To Operate Over Certain Trackage of Southern Pacific Company

At a Session of the Interstate Commerce Commission, Safety and Service Board No. 1, held in Washington, D.C., on the 16th day of December A.D. 1964.

Upon further consideration of Revised Service Order No. 946 (28 F.R. 11735, 12256, 29 F.R. 7425) and good cause appearing therefor:

It is ordered, That § 95.946 *The St. Louis-San Francisco Railway Company authorized to operate over certain trackage of the Southern Pacific Company (formerly T&NO)* of Service Order No. 946, be, and it is hereby amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1965, unless otherwise modified, changed, suspended, or annulled by the order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1964.

(Secs. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies sec. 1(10–17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4))

It is further ordered, That copies of this order and direction shall be served upon the State Corporation Commission of Kansas and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Safety and Service Board No. 1.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64–13317; Filed, Dec. 24, 1964; 8:47 a.m.]

[S.O. No. 948; Amdt. 2]

PART 95—CAR SERVICE

Chicago, Rock Island and Pacific Railroad Company Authorized To Operate Over Trackage of Union Pacific Railroad

At a Session of the Interstate Commerce Commission, Safety and Service Board No. 1, held in Washington, D.C., on the 16th day of December A.D. 1964.

Upon further consideration of Service Order No. 948 (29 F.R. 564, 5757) and good cause appearing therefor:

It is ordered, That § 95.948 *The Chicago, Rock Island and Pacific Railroad Company Authorized To Operate Over Trackage of Union Pacific Railroad,* of Service Order No. 948, be, and it is hereby amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1965, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1964.

(Sec. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies sec. 1 (10–17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1 (10–17), 15(4))

It is further ordered, That copies of this order and direction shall be served

upon the State Corporation Commission of Kansas and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Safety and Service Board No. 1.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64-13318; Filed, Dec. 24, 1964; 8:47 a.m.]

[S.O. No. 949; Amdt. 2]

PART 95—CAR SERVICE

Atchison, Topeka and Santa Fe Railway Company Authorized To Operate Over Trackage of Union Pacific Railroad

At a Session of the Interstate Commerce Commission, Safety and Service Board No. 1, held in Washington, D.C., on the 16th day of December A.D. 1964.

Upon further consideration of Service Order No. 949 (29 F.R. 564, 5757) and good cause appearing therefor:

It is ordered, That § 95.949 *The Atchison, Topeka and Santa Fe Railway Company authorized to operate over trackage of Union Pacific Railroad* of Service Order No. 949, be, and it is hereby amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1965, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1964.

(Sec. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies sec. 1(10–17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4))

It is further ordered, That copies of this order and direction shall be served upon the State Corporation Commission of Kansas and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement, and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Safety and Service Board No. 1.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64-13319; Filed, Dec. 24, 1964; 8:47 a.m.]

[S.O. No. 950; Amdt. 2]

PART 95—CAR SERVICE

Chicago, Burlington & Quincy Railroad Company Authorized To Operate Over Trackage of Union Pacific Railroad

At a Session of the Interstate Commerce Commission, Safety and Service Board No. 1, held in Washington, D.C., on the 16th day of December A.D. 1964.

Upon further consideration of Service Order No. 950 (29 F.R. 565, 5757) and good cause appearing therefor:

It is ordered, That § 95.950 *The Chicago, Burlington & Quincy Railroad Authorized to Operate Over Trackage of Union Pacific Railroad* of Service Order No. 950, be, and it is hereby amended by substituting the following paragraph (d) for paragraph (d) thereof:

(d) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1965, unless otherwise modified, changed, suspended, or annulled by the order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., December 31, 1964.

(Sec. 1, 12, 15, 24, Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies sec. 1(10–17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911; 49 U.S.C. 1(10–17), 15(4))

It is further ordered, That copies of this order and direction shall be served upon the State Corporation Commission of Kansas and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Safety and Service Board No. 1.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64-13320; Filed, Dec. 24, 1964; 8:48 a.m.]

[S.O. No. 951; Amdt. 2]

PART 95—CAR SERVICE

Union Pacific Railroad Authorized To Operate Over Industrial Trackage of Freeport Center, Inc.

At a Session of the Interstate Commerce Commission, Safety and Service Board No. 1, held in Washington, D.C., on the 16th day of December A.D. 1964.

Upon further consideration of Service Order No. 951 (29 F.R. 1386, 8419) and good cause appearing therefor:

It is ordered, That § 95.951 *Union Pacific Railroad authorized to operate over industrial trackage of the Freeport Center, Inc.,* of Service Order No. 951, by, and it is hereby amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1965, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

(e) *Effective date.* This amendment shall become effective at 11:59 p.m., December 31, 1964.

(Secs. 1, 12, 15, 24 Stat. 379, 382, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies secs. 1(10–17), 15(4), 40 Stat. 101, as amended 54 Stat. 911, 49 U.S.C. 1(10–17), 15(4))

It is further ordered, That copies of this amendment shall be served upon the Department of Business Regulation, Public Service Commission, State of Utah, and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Safety and Service Board No. 1.

[SEAL] HAROLD D. McCOY, *Secretary.*

[F.R. Doc. 64-13321; Filed, Dec. 24, 1964; 8:48 a.m.]

[S.O. No. 952; Amdt. 2]

PART 95—CAR SERVICE

Denver and Rio Grande Western Railroad Authorized To Operate Over Industrial Trackage of Freeport Center, Inc.

DECEMBER 22, 1964.

At a Session of the Interstate Commerce Commission, Safety and Service Board No. 1, held in Washington, D.C., on the 16th day of December A.D. 1964.

Upon further consideration of Service Order No. 952 (29 F.R. 1386, 8419) and good cause appearing therefor:

It is ordered, That § 95.952 *Denver and Rio Grande Western Railroad authorized to operate over industrial trackage of the Freeport Center, Inc.,* of Service Order No. 952, be, and it is hereby amended by substituting the following paragraph (f) for paragraph (f) thereof:

(f) *Expiration date.* This order shall expire at 11:59 p.m., June 30, 1965, unless otherwise modified, changed, suspended, or annulled by order of this Commission.

(e) *Effective date.* This amendment shall become effective at 11:59 p.m., December 31, 1964.

(Sec. 1, 12, 15, 24 Stat. 379, 383, 384, as amended; 49 U.S.C. 1, 12, 15. Interprets or applies sec. 1(10–17), 15(4), 40 Stat. 101, as amended, 54 Stat. 911, 49 U.S.C. 1(10–17), 15(4))

It is further ordered, That copies of this amendment shall be served upon the Department of Business Regulation, Public Service Commission, State of Utah, and upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and per diem agreement under the terms of that agreement; and that notice of this order shall be given to the general public by depositing a copy in the office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Safety and Service Board No. 1.

[SEAL] HAROLD D. McCOY,
Secretary.

[F.R. Doc. 64–13322; Filed, Dec. 24, 1964; 8:48 a.m.]

Proposed Rule Making

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1004]

[Milk Order 4]

MILK IN DELAWARE VALLEY MARKETING AREA

Termination of Proceeding To Suspend Certain Provision of Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), notice of proposed rule making was issued by the Deputy Administrator, Agricultural Marketing Service, on December 8, 1964, with respect to suspension of certain provision of the order regulating the handling of milk in the Delaware Valley marketing area. Interested persons were invited to submit their views, data or arguments to the hearing clerk not later than December 14 in connection with the proposed suspension.

The provision in § 1004.50(a)(4) proposed to be suspended reads "and shall be an additional 20 cents more if the percentage of such receipts to such disposition is less than 126". Such provision relates to the supply-demand adjustment mechanism in the Class I pricing formula which increases the Class I price level when the 12-month average ratio of producer receipts to Class I sales drops below the standard ratio of 126.

Cooperative associations representing a substantial proportion of producers serving the market and fluid milk handlers regulated under the terms of the order requested the suspension to prevent a 20-cent increase in the Class I price for the forthcoming quarter (January–March) over the price level of the current quarter (October–December). Petitioners stated that the higher Class I price would be contraseasonal and would jeopardize their markets because of price disparities between the Delaware Valley and adjacent Federal order markets.

The anticipated price increase which prompted the request for suspension action was based on market information then available to the market administrator and interested parties. Handler reports filed for the month of November revealed that the provision in question will not affect the expected 20-cent increase in the Class I price for the January–March quarter.

Because the requested suspension action would accomplish no useful purpose, it is found and determined that the proposed suspension for the period December 1, 1964 through March 31, 1965, of the aforesaid provision of the order relating to the supply-demand adjustor should not be effectuated; and the proceeding begun in this matter on December 8 is hereby terminated.

Signed at Washington, D.C., on December 21, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

[F.R. Doc. 64–13257; Filed, Dec. 24, 1964; 8:45 a.m.]

[7 CFR Part 1098]

[Docket No. AO–184–A20]

MILK IN NASHVILLE, TENN., MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Nashville, Tenn., on July 28–30, 1964, pursuant to notice thereof issued on June 19, 1964 (29 F.R. 8106).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator on November 17, 1964 (29 F.R. 15651; F.R. Doc. 64–11910) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto.

The material issues on the record of this hearing relate to:

1. Expansion of the marketing area;
2. Location differentials to handlers and producers;
3. Providing a Class II classification for certain designated outlets;
4. Requiring a handler to settle with the market administrator for all producer milk delivered to his pool plant; and
5. Computing the producer butterfat differential to the nearest fifth of a cent.

Findings and conclusions. The following findings and conclusions on the material issues are based on evidence presented at the hearing and the record thereof:

1. *Expansion of the marketing area.* The Nashville, Tenn., marketing area, which now contains 17 Tennessee counties, three Kentucky counties and the Fort Campbell military reservation, should be expanded by adding the 18 Tennessee counties of Cannon, Clay, Coffee, DeKalb, Fentress, Giles, Jackson, Lawrence, Lewis, Maury, Marshall, Overton, Perry, Pickett, Putnam, Warren, Wayne and White; and the three Kentucky counties of Barren, Metcalf and Monroe. The expanded marketing area will comprise a contiguous area in which both wholesale and retail routes of milk handlers doing business in the area are interspersed. The handling of milk in this proposed marketing area is in the current of interstate commerce and directly burdens, obstructs or affects interstate commerce in milk and its products.

The minimum sanitary requirements applicable to Grade A milk throughout the present and proposed marketing area are those of the States of Tennessee and Kentucky, which are patterned after the U.S. Public Health Ordinance and Code. In the case of some local health authorities, there may be minor variations. Such variations, however, do not materially affect the procurement or distribution of milk within the area.

With the advent of new and better highways, improved and larger transportation equipment, better refrigeration facilities for storing and moving milk, and the shifting by consumers from home delivery to store purchases of fluid milk products, the area serviced by handlers has been expanded. The present marketing area does not constitute the proper marketing area under current marketing conditions. For this reason several Nashville regulated handlers and the principal cooperative association of producers in the market proposed that the present marketing area be expanded by adding the 21 counties enumerated above and Hardin County, Tenn.

One plant in each of the Tennessee counties of Coffee, Giles, Maury, and Warren would become fully regulated because of the marketing area expansion. The plants of two other unregulated distributors with sales in some counties proposed to be added to the marketing area are in Lincoln County, Tenn., and Wayne County, Ky. It was indicated that the Wayne County handler would become fully regulated under the Louisville-Lexington-Evansville order if the marketing area of that order were expanded as proposed at a recent hearing. It is not clear from the record, however, whether or not the Lincoln County handler would become fully regulated under the Nashville order as a result of this marketing area expansion.

More than half the Class I distribution in the 13 counties of Cannon, DeKalb, Jackson, Lawrence, Lewis, Marshall, Overton, Perry, Putnam, Wayne, and White in Tennessee and Barren and Metcalf in Kentucky is made by presently regulated Nashville order handlers. In two of these counties, Lewis and Perry, all milk sold is now regulated under the Nashville order. In the Tennessee counties of Jackson, Overton and Putnam and in the Kentucky counties of Barren and Metcalf, all milk sold is regulated under either the Nashville, Louisville-Lexington-Evansville (assuming the Wayne County, Ky., plant would be regulated under that order) or the Knoxville order. In the six remaining counties mentioned above, one or more presently unregulated handlers also sell fluid milk products.

The addition of Clay, Fentress, and Pickett Counties, Tenn., and Monroe County, Ky., to the marketing area will not subject any additional handlers to regulation under the Nashville order. Practically all Class I distribution in these counties is from the plants of handlers subject to the Nashville, Louisville-Lexington-Evansville and Knoxville orders. Presently, the only unregulated distribution in these counties is the relatively limited sales by the Wayne County, Ky., handler. As indicated above, this handler would become subject to the Louisville-Lexington-Evansville order if the marketing area of that order is expanded as proposed in a recent hearing.

Distributors operating unregulated plants in the Tennessee counties of Coffee, Giles, Maury, and Warren claimed they have the major proportion of the sales of fluid milk products in their respective counties. The cooperative association serving the Nashville market and the regulated handlers, however, presented statistical data showing that in Coffee and Maury Counties, Nashville handlers have about 70 and 65 percent, respectively, of the sales. The operator of the unregulated plant in Coffee County estimated he has slightly over 50 percent of the total sales in that county. The operator of the unregulated plant in Giles County estimated his firm has about two-thirds of the total sales in the county and that his major Nashville competitor had 20 percent of the sales. The operator of the unregulated plant in Maury County estimated he has 60 percent of the wholesale business and 75 percent of the retail business in the county. The operator of the unregulated plant in Warren County estimated he has about 80 percent of the sales in the county. Although there was a conflict in the testimony as to whether Nashville regulated handlers or the unregulated distributors had the major proportion of the sales in these counties, the information presented by the regulated handlers and the cooperative association serving the Nashville market contained detailed statistical data for each county of the sales by all competing handlers. No such detailed summary was presented by these four distributors and, accordingly, greater reliability must be placed upon the testimony presented by the Nashville regulated handlers and the cooperative association.

A substantial proportion of the sales of the three presently unregulated distributors in Coffee, Giles and Warren Counties is within these counties. Nashville regulated handlers also have Class I sales in all three counties. Whether or not Coffee, Giles and Warren Counties are included in the marketing area, the three unregulated handlers would be subject to full regulation because of their sales in other counties in the proposed marketing area. To exclude these counties from the marketing area could place these distributors at a disadvantage in competing with milk from unregulated sources for Class I sales within the counties wherein their plants are located and in which they are among the principal distributors. In view of the above, it would be inappropriate to exclude these counties from the proposed enlarged marketing area.

Nashville regulated handlers have the majority of the sales in Maury County as well as in most adjacent counties and it is an integral part of their sales area. Adding this county to the marketing area will maintain contiguity with the other counties herein to be added. Its omission would create a hiatus in the geographic expanse of the marketing area.

By including Coffee, Giles, Maury and Warren Counties in the marketing area, the major portion of the Class I sales of the four distributors located in these counties would be within the proposed marketing area and inclusion of these counties would not result in the regulation of any other known distributor, either wholly or partially.

Hardin County, Tenn., should not be added to the marketing area at this time. Presently, there is only one handler subject to the Nashville order distributing milk in this county. Of the two other regulated handlers with Class I sales in this county, one is subject to the Memphis order and the other to the Paducah order. Together, these three handlers distribute about 65 percent of the fluid milk products sold in the county. There are two unregulated handlers who also distribute milk in this county. These two handlers, however, have their principal sales in competition with handlers who would not be required to pay the specified minimum prices or account for the use of their milk under the Nashville order.

Five presently unregulated distributors testified at the hearing in opposition to extension of the marketing area. They maintained that regulated handlers are not at a competitive disadvantage when distributing milk in these unregulated counties because the unregulated distributors pay their producers a price that is competitive with the Nashville market price. The dairy farmers delivering milk to the distributors who would become regulated by the Nashville order under this proposal, except the distributor whose plant is located in Giles County, receive payment for their milk without regard to its use. These distributors pay their producers a price based on the Nashville order blend price. In most cases, these distributors use a larger percentage of their milk receipts in Class I than is reflected by the blend price for the Nashville market. To the extent that such distributors have a higher Class I utilization and do not purchase milk on a class-use basis, they do have a competitive advantage over the Nashville handlers who are required to pay class prices according to the use value of their milk.

The dairy farmers who deliver milk to the Giles County distributor sell their milk under a pricing plan described as similar to the plan prescribed by the Nashville order. There is no agency, however, to supervise and enforce this plan. These producers have no means for obtaining an impartial audit of the handler's records to determine whether they are, in fact, receiving the full class utilization value of milk as it would be computed under the Federal order.

These unregulated handlers gave as one of their reasons for opposing regulation that the dairy companies in Nashville would force them out of business. Federal milk orders give assurance to all regulated handlers that their competitors in the marketing area are purchasing their milk supplies at the same prices and upon the same class-use basis. There is no basis for the charge that the proposed extension of the marketing area would force these unregulated handlers out of business.

These same unregulated handlers also argued that the expense of keeping the extra records that would be required by the order would be prohibitive. They did admit, however, that the only extra records involved would be records which show their utilization of milk in Class I and II outlets and that the maintenance of such records would not be burdensome.

A further argument presented by these unregulated handlers was that if they became regulated, they would lose their producers to the producer association in the market and thereby lose control over them. One handler, who operates a Grade A fluid milk plant and a cheese plant at which he received ungraded milk presented an additional argument. At the present time, all the milk of Grade A producers is picked up in cans and is transported to his plant on the same truck with the milk from ungraded milk producers. This milk is transported on the same truck because it would not be economically feasible to haul the ungraded milk on a separate truck since the ungraded milk producers average about 60 pounds of milk per pickup. This handler maintained that if his fluid milk plant became regulated under the order, his Grade A producers would install bulk tanks. This would make it necessary for him to give up over 250 ungraded producers who are presently having their milk delivered on the same trucks as the Grade A producers. Federal milk orders may neither require producers to join cooperative associations nor force producers to deliver their milk in either bulk tanks or cans. Also, there are no restrictions placed on handlers as to where or from whom they may purchase their milk.

Three dairy farmers who produce milk for two of the unregulated handlers also testified against the expansion of the marketing area. These dairy farmers claimed that if they came under the order, they would receive less for their milk.

The prices received by these three dairy farmers for their milk are based upon the Nashville blend prices. The handlers to whom they deliver stated on the record that the price they pay their producers is about the same price as Nashville producers receive for their milk and is not based upon the handler's utilization of their milk. The Class I utilization of the handlers to whom they deliver is somewhat higher than the average for the Nashville market; therefore, regulating these handlers will have a tendency to increase the Nashville blend price and to that extent these pro-

ducers would realize an increase in the price they receive for their milk.

The representative of the producers' association also claimed that the great majority of dairy farmers in the counties proposed to be added to the marketing area desire the same protection and pricing arrangements as producers delivering to Nashville. Dairy farmers in those counties, it was further stated, want the same checking procedure on weights and tests that are afforded producers who have the benefit of Federal regulation.

It would not be practicable to consider including in the marketing area all territory wherein handlers who would be regulated because of their sales in the expanded marketing area have Class I sales. Neither would it be feasible under this order to attempt to differentiate for the purpose of regulation between Class I sales by such handlers inside and outside the marketing area. It is necessary that all producer milk be fully regulated regardless of where it is sold. Otherwise, the effect of the order would be nullified and the orderly marketing process would be jeopardized.

If only a pool handler's "in area" milk is subject to classification, pricing and pooling, a handler with sales outside the marketing area could assign any value he chose to such sales and thereby reduce the average cost of his Class I milk below that of other regulated handlers having all, or substantially all, of their Class I sales within the marketing area. In short, unless all milk of such handler is fully regulated, he would not, in fact, be subject to effective price regulation at all. The absence of effective classification, pricing and pooling of such milk would disrupt orderly marketing conditions within the regulated marketing area and lead to a complete breakdown of the order.

As noted in three decisions issued June 19, 1964 (29 F.R. 9001, 9109 and 9213, official notice of which is taken) regarding amendments to 75 Federal milk orders, there is no way to treat unregulated milk equally with regulated milk other than to regulate it fully. In the case of plants having insufficient association with the market to meet pool plant requirements, it was concluded that the inequalities resulting from pricing only the small percentage of the milk at such plants which was disposed of in the marketing area would not be serious enough to jeopardize the marketing conditions within the regulated marketing area.

However, in the case of plants which have sufficient association with the market to meet the pool plant requirements, permitting them to dispose of a portion of their receipts outside the marketing area completely free of regulation would, because of the volume of milk they dispose of in the marketing area, disrupt orderly marketing processes within the regulated market and render ineffective the classification and pricing provisions of the order. With a handler free to value a portion of his milk at any price he chose (zero if he desired) it would be impossible to enforce uniform prices to all regulated handlers or a uniform basis of payments to the producers who supply the market.

It is absolutely essential, therefore, that the order price all the producer milk received at a pool plant regardless of the point of disposition.

The marketing area expansion herein proposed requires no change in the maximum administrative assessment of 4 cents per hundredweight now provided in the order. Although, as a result of this decision, about four or five additional distributors would become subject to regulation, the additional quantities of milk involved should not materially alter the maintenance and functioning of the market administrator's office. If it appears at any time that a lower rate will cover administration expenses, the Secretary may set the actual rate at a lower level without the necessity of amending the order.

2. *Location differentials to handlers and producers.* The location differential provisions of the order should not be changed at this time.

For plants located outside the State of Tennessee and more than 50 miles from the State Capitol in Nashville, the order now provides for the Class I price and the blend price paid to producers (except for excess milk) to be reduced by 10 cents with an additional reduction of 1.5 cents for each 10 miles or fraction thereof that such distance exceeds 70 miles.

The two proposals at the hearing to revise the location differential provisions were concerned only with the basing point from which the mileages from the plant where milk was received from producers would be determined. No proposals were made to change the location adjustment rates. A cooperative association proposal would replace Nashville as the basing point with the nearest of the cities of Nashville, Clarksville, Tenn., and Bowling Green, Ky. A proposal made by four Nashville based handlers would establish "the nearest point in the boundary of the marketing area" as the basing point.

Three Nashville regulated handlers whose plants are in Kentucky and more than 50 miles from Nashville, are subject to a location adjustment on milk they receive from producers. A location differential of 10 cents is applicable to the milk received at the plants of two handlers in Bowling Green, which is 65 miles from Nashville. The plant of the third handler, in Hiseville, Ky., is between 100–110 miles from Nashville and the location differential credit of 16 cents is applicable to milk received from producers there.

The Nashville based handlers claim that they are at a disadvantage in competing for sales with these three handlers because of the location adjustment credit that the latter receive. They contend that marketing conditions in the area have changed significantly since the present location differential provisions were incorporated in the order in November 1960. Although the express purpose of the proposals is to require these handlers to pay the same price for Class I milk as Nashville handlers, proponents neither showed that these Kentucky handlers have any cost advantage on Class I milk nor justified the proposed new basing points.

These three handlers in the northern fringe of the present marketing area have their principal distribution in the Kentucky portion of the marketing area. They compete for Class I sales with Louisville-Lexington-Evansville order (Order 46) regulated handlers. No location adjustment is applicable under Order 46 on milk received at plants in Bowling Green, Hiseville, or in the area where these handlers have their principal distribution. On an annual basis, the Order 46 Class I price (before adjustment for supply-demand) is 9 cents below the Nashville order Class I price. However, when the Nashville price is adjusted by the present applicable location differential for plants in the Bowling Green vicinity, it approximates the Order 46 price at that location. Hence, if the Nashville order location differential adjustments now applicable in the Bowling Green area were removed as proposed, these three Nashville regulated handlers would be at a disadvantage in competing with Order 46 handlers for Class I sales in the area where they have their principal distribution.

The three Kentucky based handlers are located in an outlying part of the marketing area north from Nashville. They are nearer to their sources of supply than Nashville handlers and it hence costs farmers less to deliver milk to these locations than the average cost of delivering milk to Nashville. Moreover, because these handlers are located north of Nashville, they are generally closer to alternative sources of supply at lower prices than handlers whose plants are located in Nashville. These factors should be reflected in the location pricing for the plants in the Kentucky area and it appears the present location differentials contained in the Nashville order appropriately reflect these conditions.

The purpose of establishing location differentials is to achieve uniformity in prices to all handlers for milk which is received from producers at plants located at varying distances from the principal consumption area. Nashville is the principal city in the marketing area and is centrally located with respect to the overall marketing area. It is the point where the major portion of producer milk for the market is received and from which milk is distributed to consumers throughout the marketing area. Accordingly, it is appropriate that the mileages for determining location differential adjustments continue to be measured from Nashville, and the proposals to establish other basing points for determining location differential adjustments are denied.

3. *Providing a Class II classification for certain designated outlets.* (a) Skim milk and butterfat in fluid milk products dumped should be classified as Class II. Presently, only the skim milk portion of fluid milk products dumped may be so classified.

Nashville handlers have certain amounts of fluid milk products that they are unable to dispose of for Class I uses. Allowing a Class II classification for both the skim milk and butterfat contained in dumped fluid milk products will recognize the impracticability of

Nashville handlers' recovering the butterfat in route returns and other fluid milk products that are not salable as Class I.

The order now provides as a condition for obtaining a Class II classification for fluid milk products dumped that the market administrator be notified prior to such disposition and afforded the opportunity for verification. Retaining this condition will insure the practical application of the dump provision.

(b) The proposal to classify as Class II sour cream mixtures to which cheese or any food substance other than a milk product has been added which are not labeled Grade A should be adopted. Products that are blends of cultured sour milk and cream with cheese and nondairy food ingredients are known as dip speciality products. These products are not labeled Grade A and compete with similar products distributed in the marketing area that are not subject to the Nashville order.

Since Class I milk should include products which are required to be made from Grade A milk, sour cream mixtures which are labeled Grade A should remain in Class I. Sour cream mixtures sold in the marketing area as Grade A products must be made from Grade A milk. However, if they are not labeled Grade A, they may be made from non-Grade A milk. Since such dip speciality products may be, and are, sold in the marketing area as non-Grade A products, they should not be included in Class I unless labeled Grade A.

(c) Class II classification should be provided for skim milk and butterfat disposed of in bulk fluid milk products to bakeries, candy factories, soup factories and similar establishments at which the fluid milk products are used in the manufacture of food products other than milk products. A Class II classification of such fluid milk products will price them competitively with alternative supplies, such as nonfat dried milk and condensed milk, which are available for the manufacture of food products. Such classification should be limited to disposition of milk products in bulk form, however, to minimize the administrative burden of verifying its ultimate utilization. This limitation is appropriate under the circumstances where packaged fluid milk products sold to bakeries and similar establishments easily may be retailed in this same form to consumers for fluid consumption either on or off the premises.

4. *Requiring a handler to settle with the market administrator for all producer milk delivered to his pool plant.* Pool plant operators should be required to pay the market administrator at the applicable class prices for all producer milk delivered to their plants including the bulk tank deliveries from producers' farms for which a cooperative association is the handler.

The order now specifies that a handler shall pay the market administrator the class prices for milk delivered to his pool plant by producers. The market administrator then pays the uniform price to each producer either directly or through a cooperative association of which the producer is a member.

There is one exception to the above procedure. This involves bulk tank milk that is received at pool plants from a cooperative which elects to be the handler on its producer members' milk that is delivered from the farm to the pool plant of another handler in a tank truck. This milk is considered to be received by the cooperative at the pool plant. Under this arrangement, each handler pays the cooperative the class prices on this milk and the cooperative transmits these payments directly to the market administrator. The cooperative then receives payment from the market administrator at the uniform price on this milk and producer-member milk for which the cooperative is not the handler. This procedure results in extra handling of the money and does not serve any useful purpose.

The cooperative proposed that handlers receiving bulk tank milk from the cooperative in its capacity as a handler on such milk pay the classified value directly to the market administrator. It was claimed that this would expedite payments to producers and simplify the reporting and bookkeeping for all handlers, the cooperative and the market administrator.

Requiring handlers to make payments at the class prices directly to the market administrator on this milk will eliminate the unnecessary involvement of the cooperative in transactions which involve only the market administrator and the pool plant handlers. Handlers who operate the pool plants at which this milk is received are the persons who maintain records which show the quantities of milk utilized in Class I and Class II and report this utilization to the market administrator.

5. *Computing the producer butterfat differential to the nearest fifth of a cent.* The computation of the producer butterfat differential should specify that the differential be rounded to the nearest one-fifth cent.

Presently, the producer butterfat differential is rounded to the nearest one-tenth cent. Also, producers' butterfat tests are adjusted to half-points. It was claimed that when the butterfat differential ends with an odd number (e.g., 7.1 cents) and a producer's average butterfat test contains a half-point (e.g., 3.65 percent) the adjusted price in computing the payment due the producer yields a series of fractions. To prevent the computing of this series of fractions, it was proposed at the hearing that the butterfat differential be rounded to the nearest even mill, i.e., one-fifth cent. There was no opposition to this proposal.

In the interest of marketing efficiency and convenience to the cooperative association and handlers in the market, it is appropriate that the order provide for the rounding of the producer butterfat differential to the nearest one-fifth cent.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order, as hereby proposed to be amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order, as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(c) The tentative marketing agreement and the order, as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held;

(d) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct or affect interstate commerce in milk or its products; and

(e) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe with respect to receipts during the month of (1) Producer milk (including such handler's own farm production), (2) Other source milk allocated to Class I pursuant to § 1098.46(a) (3) and (7) and the corresponding steps of § 1098.46 (b), and (3) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory pro-

visions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled respectively, "Marketing Agreement Regulating the Handling of Milk in the Nashville, Tennessee, Marketing Area", and "Order Amending the Order Regulating the Handling of Milk in the Nashville, Tennessee, Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Referendum order; determination of representative period; and designation of referendum agent. It is hereby directed that a referendum be conducted to determine whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the Nashville, Tenn., marketing area, is approved or favored by the producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during the representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

The month of November 1964, is hereby determined to be the representative period for the conduct of such referendum. J. B. McCroskey is hereby designated agent of the Secretary to conduct such referendum in accordance with the procedure for the conduct of referenda to determine producer approval of milk marketing orders (15 F.R. 5177), such referendum to be completed on or before the 30th day from the date this decision is issued.

Signed at Washington, D.C., on December 22, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

Order [1] Amending the Order Regulating the Handling of Milk in the Nashville, Tennessee, Marketing Area

§ 1098.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Nashville, Tenn., marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(4) All milk and milk products handled by handlers, as defined in the order as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrator for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense 4 cents per hundredweight or such amount not to exceed 4 cents per hundredweight as the Secretary may prescribe, with respect to receipts during the month of (1) Producer milk (including such handler's own farm production), (2) Other source milk allocated to Class I pursuant to § 1098.46(a) (3) and (7) and the corresponding steps of § 1098.46(b), and (3) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

Order relative to handling. It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Nashville, Tenn., marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended and as hereby amended, as follows:

1. Section 1098.6 is revised to read as follows:

§ 1098.6 Nashville, Tennessee, marketing area.

"Nashville, Tennessee, marketing area" hereinafter called the "marketing area" means all the territory within the boundaries of the following:

(a) Tennessee counties of:

Bedford.	Maury.
Cannon.	Montgomery.
Cheatham.	Overton.
Clay.	Perry.
Coffee.	Pickett.
Davidson.	Putnam.
DeKalb.	Robertson.
Dickson.	Rutherford.
Fentress.	Smith.
Giles.	Stewart.
Hickman.	Sumner.
Houston.	Trousdale.
Humphreys.	Warren.
Jackson.	Wayne.
Lawrence.	White.
Lewis.	Williamson.
Macon.	Wilson.
Marshall.	

(b) Kentucky counties of:

Allen.	Monroe.
Barren.	Simpson.
Metcalf.	Warren.

(c) Fort Campbell military reservation.

2. Section 1098.8(c) is revised to read as follows:

§ 1098.8 Handler.

* * * * *

(c) A cooperative association with respect to the milk of its producer members which is delivered from the farm to the pool plant(s) of another handler in a tank truck owned, operated by or under contract to, such cooperative association for the account of the cooperative association if the cooperative association has notified in writing, prior to delivery, both the market administrator and the handler to whom the milk is delivered that it wishes to be the handler for such milk. Such milk shall be considered as having been received at the location of the plant to which it was delivered;

* * * * *

3. Section 1098.13 is revised to read as follows:

§ 1098.13 Producer milk.

"Producer milk" means only that skim milk or butterfat contained in milk:

(a) Received at a pool plant directly from a dairy farmer or a handler pursuant to § 1098.8(c); or

(b) Diverted from a pool plant to any other milk plant (except a plant at which such milk is fully subject to the pricing provisions of another order issued pursuant to the Act) in accordance with the provisions of § 1098.7.

4. Section 1098.15 is revised to read as follows:

§ 1098.15 Fluid milk product.

"Fluid milk product" means milk, skim milk, buttermilk, flavored milk, flavored milk drinks, yogurt, cream (sweet and sour), or any mixture in fluid form of skim milk and butterfat components of milk (except sterilized products packaged in hermetically sealed containers, eggnog, ice cream mix,

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

aerated cream and sour cream mixtures to which cheese or any food substance other than a milk product has been added and which is not disposed of under a Grade A label).

§ 1098.30 [Amended]

5. In the introductory text of § 1098.30, the reference "§ 1098.8(e) is revised to read "§ 1098.8 (c) or (e)".

6. The introductory text in § 1098.31 (a) is revised to read as follows:

§ 1098.31 Payroll reports.

(a) Each handler pursuant to § 1098.8 (a), (b), or (c) shall report to the market administrator in the detail and on forms prescribed by the market administrator as follows:

* * * * *

7. Section 1098.32 is revised to read as follows:

§ 1098.32 Other reports.

(a) On or before the 6th day after the end of each month, each handler pursuant to § 1098.8(c) shall report to the market administrator, in detail and on forms prescribed by him, the quantities of skim milk and butterfat in producer milk delivered to each pool plant in such month.

(b) On or before the 21st day of each month, each handler pursuant to § 1098.8 (c) shall report to the market administrator in detail and on forms prescribed by him, the quantities of producer milk delivered to each pool plant for the first 15 days of such month.

(c) Each producer-handler and each handler exempt pursuant to § 1098.91 shall make reports to the market administrator at such time and in such manner as the market administrator may request.

§ 1098.35 [Amended]

8. In § 1098.35, the language, ", except that milk for which the association is the handler," is revoked.

9. Section 1098.41 (a)(1)(ii) and (b)(3) is revised and a new paragraph (b)(3–a) is added to read as follows:

§ 1098.41 Classes of utilization.

* * * * *

(a) * * *

(1) * * *

(ii) Products classified pursuant to paragraphs (b)(3) or (3–a) of this section;

* * * * *

(b) * * *

(3) Disposed of and used for livestock feed or dumped after prior notification to, and opportunity for verification by, the market administrator;

(3–a) Disposed of in bulk fluid milk products to bakeries, candy factories, soup factories and similar establishments at which the fluid milk products were used in the manufacture of food products other than milk products;

* * * * *

§ 1098.44 [Amended]

10. In the introductory text of § 1098.44(a), the language "or a cooperative association as a handler pursuant to § 1098.8(c)" is revoked.

§ 1098.46 [Amended]

11. In § 1098.46(a), subparagraph (4)(i)(b), the language "and from a cooperative association as a handler pursuant to § 1098.8(c)" is revoked and in subparagraph (9), the language "and from a cooperative association in its capacity as a handler pursuant to § 1098.8(c)" is revoked.

§ 1098.70 [Amended]

12. In the introductory text of § 1098.70, the reference "§ 1098.8 (a), (b), and (c)" is revised to read "§ 1098.8 (a) and (b)".

13. Section 1098.81(a) is revised to read as follows:

§ 1098.81 Payments to market administrator.

(a) On or before the 25th day of each month, each handler receiving milk from producers or from a handler pursuant to § 1098.8(c) shall pay to the market administrator for deposit into the producer-settlement fund an amount of money calculated by multiplying the hundredweight of producer milk received by him during the first 15 days of such month by the Class II price for the preceding month;

* * * * *

14. In § 1098.82, paragraph (d) is revoked and paragraph (c) is revised to read as follows:

§ 1098.82 Payments to producers.

* * * * *

(c) In making payments to producers pursuant to paragraphs (a) and (b) of this section, the market administrator shall pay, on or before the second day prior to the date payments are due to individual producers, to a cooperative association which is authorized to collect payment for milk of its members and from which a written request for such payments has been received, a total amount equal to the sum of the individual payments otherwise payable to such producers pursuant to this section.

15. Section 1098.83(a) is revised to read as follows:

§ 1098.83 Butterfat and location differentials to producers and on nonpool milk.

(a) The applicable uniform price to be paid each producer shall be increased or decreased for each one-tenth percent which the average butterfat content of his milk is above or below 3.5 percent, respectively, at a rate, rounded to the nearest one-fifth cent, determined by multiplying by 0.12 the average of the daily wholesale prices (using the midpoint of any price range as one price) of 92-score bulk creamery butter per pound at Chicago, as reported by the Department during the previous month.

* * * * *

16. Section 1098.85 is revised to read as follows:

§ 1098.85 Expense of administration.

As his pro rata share of the expense of administration of the order, each handler shall pay to the market administrator on or before the 15th day after the end of the month, 4 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to receipts during the month of:

(a) Producer milk (including such handler's own production);

(b) Other source milk allocated to Class I pursuant to § 1098.46(a) (3) and (7) and the corresponding steps of § 1098.46(b); and

(c) Class I milk disposed of from a partially regulated distributing plant on routes in the marketing area that exceeds Class I milk received during the month at such plant from pool plants and other order plants.

[F.R. Doc. 64–13270; Filed, Dec. 24, 1964; 8:46 a.m.]

[7 CFR Part 1126]

[Docket No. AO–231–A23]

MILK IN NORTH TEXAS MARKETING AREA

Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Dallas, Tex., on August 26, 1964, pursuant to notice thereof issued on August 18, 1964 (29 F.R. 11974).

Upon the basis of the evidence introduced at the hearing and the record thereof, the Associate Administrator on November 27, 1964 (29 F.R. 16198; F.R. Doc. 64–12365) filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of opportunity to file written exceptions thereto.

The material issues on the record of the hearing related to:

1. The need for an emergency increase in the Class I milk prices established by the order regulating the handling of milk in the above designated marketing areas;

2. Class II classification of dumped milk, half and half, coffee cream and whipping cream;

3. Revision of the method for computing producer butterfat differentials; and

4. Whether an emergency exists concerning Issue No. 1 which requires the omission of a recommended decision and opportunity for interested persons to file exceptions thereto and the immediate issuance of a final decision.

A final decision containing the findings and conclusions on Issue No. 1 and Issue No. 4 was issued September 24, 1964 (29 F.R. 13397) and a final order on September 28, 1964 (29 F.R. 13475). This concluded action on all issues affecting orders other than that for the North Texas marketing area (Part 1126). This decision is concerned with the remaining issues, all of which relate to the North Texas order only.

Findings and conclusions. The following findings and conclusions on the remaining material issues (No. 2 and No. 3) are based on evidence presented at the hearing and the record thereof:

2. *Classification in the North Texas order of (a) half and half, coffee cream and whipping cream; and (b) dumped milk.* (a) Half and half, coffee cream and whipping cream should not be classified as Class II milk under the North Texas order.

A handler contended that his firm is meeting adverse competition in the distribution of coffee cream and half and half. The testimony was that substitute products made from mixtures of nonfat dry milk and vegetable fat have caused the handler to lose a substantial volume of the restaurant business for these products in the Dallas portion of the North Texas market.

Sales data for the three products were introduced in evidence. The utilization of butterfat in half and half increased 2.2 percent during the 12-month period ending July 1964 as compared with the same period a year earlier. At the same time, its utilization in coffee cream decreased 26 percent, and in whipping cream remained the same for the periods compared. The total utilization of butterfat in the three products decreased 9.1 percent as compared with a year earlier. About 40 percent of the butterfat used in the three products is disposed of in half and half, 31 percent in coffee cream, and 29 percent in whipping cream.

It may be that coffee cream sales have been lost to substitute products. The data indicate the probability that some of the decrease in butterfat used for coffee cream has been absorbed by the increased utilization of butterfat in half and half. Coffee cream and half and half are interchangeable as dairy products for "creaming" beverages and cereals.

The most important consideration, however, is that health authorities require that the three products be made from inspected milk. So long as this requirement is in effect, the fact that substitute products that do not have to be made from inspected milk may be sold at lower prices is not a convincing reason for changing the classification.

Producers should continue to receive the Class I price for milk sold in these products under the Grade A label, rather than the Class II price which they receive for reserve milk disposed of in dairy products which do not require health department inspection. Under present marketing conditions, the Class II classification of skim milk and butterfat in half and half, coffee cream and whipping cream is unwarranted and is therefore denied.

(b) Class II classification should be provided for milk that is dumped because buttermilk has not been produced from skim milk to which buttermilk culture or "starter" has been added. Class II classification for other fluid milk products dumped should not be provided on the basis of this record.

A handler proposed that "dumped" milk be classified as Class II milk. There is presently no specific provision for classification of milk so disposed of. It is therefore treated as unaccounted for milk, or "shrinkage" for which amounts within specified limits may be accounted for as Class II milk, but amounts in excess of such limits are Class I milk.

Two situations were described in which "dumping" (pouring down the drain) of fluid milk products have reached proportions exceeding the shrinkage limits of the order. One such problem was the failure of buttermilk to "set-up". For three months of the past year, the proponent handler's allowable plant shrinkage was insufficient to accommodate the volume dumped from this cause.

Cultured buttermilk is produced by the addition of culture or "starter" to pasteurized skim milk, which is then held at an appropriate temperature until the desired acidity results. When this degree of acidity is achieved, the buttermilk has "set". At this point the product normally contains less than one percent butterfat.

Buttermilk sometimes fails to set because of improper temperature, substances in the skim milk which inhibit the growth of bacteria (such as antibiotics), bad starter and improper sterilization and cleaning of equipment. Laboratory tests made on buttermilk which fails to set do not reveal conclusively which of these causes may be responsible for such failure in a given situation. Whatever the cause, the resulting product frequently must be dumped because it has no commercial value and must be disposed of promptly. For this reason, it should be provided that when starter has been added to skim milk and the buttermilk fails to set, Class II classification should apply to the product if dumped.

Since the amount of fat contained in the product at this point in processing is normally less than one percent, it would be unreasonable to charge handlers Class I for the fat included in the dumped milk on the supposition that it can be salvaged and used again in a Class I product. It is concluded that the butterfat as well as the skim milk dumped under the conditions described should be classified as Class II.

Dumped milk involves the disappearance of product from the pool accounting problem. Provision is needed to preclude the use of self-serving records by handlers in claiming Class II classification for dumped milk. For this reason it should be provided that the handler give prior notification to and opportunity for verification by the market administrator in such manner as he may require.

Another problem described concerned off-flavored milk. During June and July 1964, about 20 percent of the milk delivered to a North Texas handler's plant was rejected because of bad flavor, and shipped to manufacturing plants. About 40 percent of all milk received is carried over to the next day for processing. The plant runs tests for acidity, butterfat, bacteria and added moisture. Even so, rancidity sometimes develops between the time the milk is received and the time it is processed. It is apparent that this problem results most often from errors made in accepting milk that should have been rejected during the receiving operation.

Ordinarily, the proponent handler's plant shrinkage is about one percent per month, including dumped milk, and is well within the allowable plant shrinkage provided in the order. This being the case, the proposal to extend Class II classification for dumped milk beyond the provision for buttermilk which does not "set" is unnecessary and is therefore denied.

3. *Butterfat differentials.* The producer butterfat differential should be calculated as an average of the Class I and Class II handler butterfat differentials weighted by the proportion of butterfat in producer milk in each class during the month, and should be calculated to the nearest one-tenth cent.

The North Texas order adjusts the uniform price to producers for milk above and below 3.5 percent butterfat content on the basis of a schedule of butterfat differentials directly related to a designated range of butter prices. The butter prices are those which are reported by the Department each month for 92-score bulk creamery butter at Chicago. This method of computation, however, does not relate the producer butterfat differential to the class-use of butterfat in the North Texas market.

Fluid milk products must meet more exacting health standards than milk for manufacturing purposes. The value of butterfat in Class I milk is higher in the North Texas market than is the value of butterfat in Class II milk. It would be more appropriate, therefore, to compute the producer butterfat differential on the basis of a weighted average of the Class I and Class II utilization of butterfat in producer milk. This technique is similar to the one which is followed in computing the uniform price paid to producers. Producers will be more appropriately compensated by adjusting their uniform prices in relation to the class-use of butterfat in producer milk.

The present producer butterfat differential has been relatively inflexible. During the 28 months ending with July 1964, it remained constant at six cents for each one-tenth of one percent butterfat content. The method recommended herein for computing the producer butterfat differential will reflect the relative utilization of butterfat in Class I and Class II milk. It will also be more responsive to changes in the price of butter. It will be consistent with the provisions of most Federal orders which adjust uniform prices to producers with producer butterfat differentials based on a weighted average of the handler butterfat differentials.

Rulings on proposed findings and conclusions. Briefs and proposed findings and conclusions were filed on behalf of certain interested parties. These briefs, proposed findings and conclusions and the evidence in the record were considered in making the findings and conclusions set forth above. To the extent that the suggested findings and conclusions filed by interested parties are inconsistent with the findings and conclusions set forth herein, the requests to make such findings or reach such conclusions are denied for the reasons previously stated in this decision.

General findings. The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) The tentative marketing agreement and the order as hereby proposed to be amended, and all of the terms and conditions thereof will tend to effectuate the declared policy of the Act;

(b) The parity prices of milk as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the proposed marketing agreement and the order as hereby proposed to be amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(c) The tentative marketing agreement and the order as hereby proposed to be amended, will regulate the handling of milk in the same manner as, and will be applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

Rulings on exceptions. In arriving at the findings and conclusions, and the regulatory provisions of this decision, each of the exceptions received was carefully and fully considered in conjunction with the record evidence pertaining thereto. To the extent that the findings and conclusions, and the regulatory provisions of this decision are at variance with any of the exceptions, such exceptions are hereby overruled for the reasons previously stated in this decision.

Marketing agreement and order. Annexed hereto and made a part hereof are two documents entitled, respectively, "Marketing Agreement Regulating the Handling of Milk in the North Texas Marketing Area" and "Order Amending the Order Regulating the Handling of Milk in the North Texas Marketing Area", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That all of this decision, except the attached marketing agreement, be published in the FEDERAL REGISTER. The regulatory provisions of said marketing agreement are identical with those contained in the order as hereby proposed to be amended by the attached order which will be published with this decision.

Determination of representative period. The month of October 1964 is hereby determined to be the representative period for the purpose of ascertaining whether the issuance of the attached order, as amended and as hereby proposed to be amended, regulating the handling of milk in the North Texas marketing area, is approved or favored by producers, as defined under the terms of the order, as amended and as hereby proposed to be amended, and who, during such representative period, were engaged in the production of milk for sale within the aforesaid marketing area.

Signed at Washington, D.C., on December 21, 1964.

GEORGE L. MEHREN,
Assistant Secretary.

Order[1] Amending the Order Regulating the Handling of Milk in the North Texas Marketing Area

§ 1126.0 Findings and determinations.

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the North Texas marketing area. Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area, and the minimum prices specified in the order as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said order as hereby amended, regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

Order relative to handling. It is therefore ordered, That on and after the effective date hereof the handling of milk in the North Texas marketing area shall be in conformity to and in compliance with the terms and conditions of the aforesaid order, as amended, and as hereby further amended, as follows:

1. In § 1126.41, a new subparagraph (b)(8) is added to read as follows:

§ 1126.41 Classes of utilization.

* * * * *

(b) * * *

(8) Dumped because buttermilk is not produced from skim milk to which buttermilk culture has been added, if the handler gives prior notification to and opportunity for verification by the market administrator in such manner as the market administrator may require.

2. In § 1126.91, paragraph (a) is revised to read as follows:

§ 1126.91 Butterfat and location differentials to producers.

(a) In making payments to producers pursuant to § 1126.90 (a) or (c), the uniform prices shall be increased or decreased by each one-tenth of one percent which the butterfat content of his milk is above or below 3.5 percent, respectively, at the rate determined by multiplying the total pounds of butterfat in the producer milk allocated to Class I and Class II milk during the month pursuant to § 1126.46 by the respective butterfat differential in each class, dividing the sum of such values by the total pounds of such butterfat, and rounding the resultant figure to the nearest one-tenth of a cent.

* * * * *

[F.R. Doc. 64-13271; Filed, Dec. 24, 1964; 8:46 a.m.]

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 36]

[Docket No. FDC-73]

SHELLFISH; FROZEN RAW BREADED AND LIGHTLY BREADED SHRIMP; DEFINITIONS AND STANDARDS OF IDENTITY

Proposed Findings of Fact and Tentative Order

Correction

In F.R. Doc. 64-13031, appearing at page 18175 of the issue for Tuesday, Dec. 22, 1964, the 14th line from the bottom of the first column on page 18177 should read "shrimp is not sufficient to disclose to the".

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 10]

[No. 32153]

UNIFORM SYSTEM OF ACCOUNTS FOR RAILROAD COMPANIES

Notice of Proposed Rule Making

DECEMBER 17, 1964.

Notice is hereby given, pursuant to Section 4 of the Administrative Procedure Act, that the Commission has under consideration amendment of the uniform system of accounts for railroad companies with regard to accounting for revenues receivable by railroad companies as direct grants or aid for providing passenger commuter or other passenger service. Complete statement of the amendment is set forth in the detailed statement of proposed rule below.

DETAILED STATEMENT OF PROPOSED RULE

Account 108, Other Passenger-train. In the text of this account 108, add the following to the list of items:

(d) Revenues receivable from states, cities, and other governmental agencies as direct grants or aid for providing passenger commuter or other passenger-train service. The term "revenues," as used herein, does not apply to aid in the form of abatement or forgiveness of taxes, assumption by local governments of station maintenance costs, and other similar special indirect benefits contributed by governmental agencies.

Responses. Railroad companies affected by the proposed rule herein and other interested parties who desire to do so should present written views or comments for our consideration as soon as practicable and not later than January 15, 1965. The Commission will consider all such responses and presentations before deciding the matter herein, after which such order as may be found appropriate will be entered. An original and three copies of any such responses should be submitted.

Notice shall be given to railroad companies hereby affected and to the general public by depositing this Notice in the Office of the Secretary of the Commission at Washington, D.C., and by filing this Notice with the Director, Office of the Federal Register.

(Sec. 20, 24 Stat. 386, as amended; 49 U.S.C. 20)

By the Commission, Division 2.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F.R. Doc. 64-13315; Filed, Dec. 24, 1964; 8:47 a.m.]

Notices

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Oregon 015334]

OREGON

Notice of Termination of Proposed Withdrawal and Reservation of Land

DECEMBER 18, 1964.

Notice of an application, Serial No. Oregon 015334, for withdrawal and reservation of lands, was published as Federal Register Document No. 64–6814 on page 9401 of the issue for July 9, 1964. The applicant agency, Forest Service, United States Department of Agriculture, has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR Part 2311, such lands will be relieved of the segregative effect of the withdrawal application at 10:00 a.m. on December 30, 1964.

The land involved in this notice of termination is:

OREGON

WILLAMETTE MERIDIAN

UMPQUA NATIONAL FOREST

Youtlkut Pillars Geological Area

T. 27 S., R. 1 E.,
Sec. 14.
Total, 30 acres.

D. B. LEIGHTNER,
Acting Manager, Land Office.

[F.R. Doc. 64–13274; Filed, Dec. 24, 1964; 8:46 a.m.]

CIVIL AERONAUTICS BOARD

[Docket No. 15725; Order E–21599]

TRANS WORLD AIRLINES, INC.

Order Granting Temporary Suspension of Service

Issued under delegated authority, December 21, 1964.

Application of Trans World Airlines, Inc., for authority to suspend service temporarily at the co-terminal point Detroit, Mich., on its international route; Docket 15725.

Trans World Airlines, Inc., (TWA) filed an application on December 1, 1964, pursuant to Part 205 of the Board's Economic Regulations, for authority to temporarily suspend its air service at Detroit, Mich., from December 29, 1964, until March 8, 1965.

In support of its application, TWA alleges that the low volume of traffic which can be generated at Detroit for the winter months would result in an uneconomical operation for TWA; [1] that the small number of transatlantic passengers to and from Detroit will continue to have ample connecting service with transatlantic flights at the New York gateway; and that suspension of service at Detroit during the indicated period would result in substantial savings to TWA; and is in the public interest.

No objections to the application have been received.

In circumstances substantially similar to those here alleged by TWA, the Board has suspended TWA at Detroit during the winter months on previous occasions.[2] Here, as in that instance, it would appear that TWA's suspension will not appreciably inconvenience Detroit transatlantic passengers during the period of the suspension. PAA's direct Transatlantic service continues to be available, as well as numerous connecting flights to New York.

On the basis of the foregoing considerations, and pursuant to authority duly delegated by the Board's regulations, 14 CFR 385.13(n), it is found that suspension of TWA's authority to serve Detroit on its international Route 147 from December 29, 1964 until March 8, 1965 is in the public interest.

Accordingly, it is ordered:

1. That Trans World Airlines, Inc., be and it hereby is authorized to suspend service at Detroit, Mich., on its international Route 147 from December 29, 1964, until March 8, 1965; and

2. That this order may be amended or revoked at any time, in the discretion of the Board, without hearing.

This order will be published in the FEDERAL REGISTER.

Persons entitled to petition the Board for review of this order pursuant to the Board's regulations, 14 CFR 385.50, may file such petitions within five days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review thereof is filed, or the Board gives notice that it will review this order on its own motion.

[SEAL] HAROLD R. SANDERSON,
Secretary.

[F.R. Doc. 64–13308; Filed, Dec. 24, 1964; 8:46 a.m.]

[1] TWA alleges that during the first three weeks of November, TWA's average load factor on its weekly Detroit International flight fell to 10.8 percent.

[2] TWA was suspended temporarily at Detroit from January 20, 1964 until March 31, 1964 (Order E–20334 and Order E–20498).

FEDERAL MARITIME COMMISSION

LYKES BROS. STEAMSHIP CO., INC.

Notice of Agreement Filed for Approval

Notice is hereby given that the following Agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Maritime Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

W. J. Amoss, Vice President Traffic,
Lykes Bros. Steamship Co., Inc.,
821 Gravier Street,
New Orleans, La., 70150.

Agreement No. 9360, between Lykes Bros. Steamship Co., Inc., Norddeutscher Lloyd, and Hamburg-Amerika Linie, as refiled, establishes a rate agreement for operation in the eastbound trade from U.S. Gulf ports (Key West, Fla., to Brownsville, Tex., inclusive) to European ports in the Le Havre/Hamburg Range. The agreement provides (1) that the parties shall discuss and agree upon rates for the trade, (2) that each party has the right to alter such rates upon giving forty-eight hours' advance notice thereof, and (3) that each party shall maintain and file its own tariff, in accordance with the terms and conditions set forth therein. Notice of the filing of Agreement 9360, was previously published in the FEDERAL REGISTER on July 13, 1964 (29 F.R. 9635). The agreement previously covered both eastbound and westbound operations.

Dated: December 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–13264; Filed, Dec. 24, 1964; 8:45 a.m.]

M.A.N.Z. LINE JOINT SERVICE

Notice of Agreement Filed for Approval

Notice is hereby given that the following Agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement(s) at the Washington office of the Federal Mari-

time Commission, 1321 H Street NW., Room 301; or may inspect agreements at the offices of the District Managers, New York, N.Y., New Orleans, La., and San Francisco, Calif. Comments with reference to an agreement including a request for hearing, if desired, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, within 20 days after publication of this notice in the FEDERAL REGISTER. A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the comments should indicate that this has been done.

Notice of agreement filed for approval by:

Elmer C. Maddy, Esq.,
Kirlin Campbell & Keating,
One Twenty Broadway, New York, N.Y. 10005.

Agreement 7814–2 between the member lines of the M.A.N.Z. Line Joint Service restates approved Agreement 7814 to eliminate the Montreal, Australia, New Zealand Line from participation, to delete New Zealand from the scope of the agreement, and to add a self-policing provision to the agreement.

Notice of the filing of Agreement 7814–2, between the member lines of this joint service, which also provided that the parties thereto would be separate members of conferences and other section 15 agreements was previously published in the FEDERAL REGISTER on February 1, 1964, 29 F.R. 1674.

Dated: December 21, 1964.

By order of the Federal Maritime Commission.

THOMAS LISI,
Secretary.

[F.R. Doc. 64–13265; Filed, Dec. 24, 1964; 8:45 a.m.]

DEPARTMENT OF THE TREASURY

Bureau of Customs

[T.D. 56326]

NELBRO PACKING CO.

Notice of Qualification as Citizen of U.S.

DECEMBER 18, 1964.

This is to give notice that pursuant to § 3.21, Customs Regulations (19 C.F.R. 3.21), issued under the provisions of section 27A of the Merchant Marine Act, 1920, as amended by the Act of September 2, 1958 (46 U.S.C. 883–1), Nelbro Packing Company, 653 Colman Building, Seattle, Washington, incorporated under the laws of the State of Washington, did on November 27, 1964, file with the Acting Commissioner of Customs, in duplicate, an oath for qualification of a corporation as a citizen of the United States following the form of oath prescribed in customs Form 1260.

The oath shows that:

(a) A majority of the officers and directors of the corporation are citizens of the United States (list of names, home addresses, and citizenship attached to the oath);

(b) Not less than 90 percent of the employees of the corporation are residents of the United States;

(c) The corporation is engaged primarily in a manufacturing or mineral industry in the United States, or in a Territory, District, or possession thereof;

(d) The aggregate book value of the vessels owned by the corporation does not exceed 10 percent of the aggregate book value of the assets of the corporation; and

(e) The corporation purchases or produces in the United States, its Territories or possessions, not less than 75 percent of the raw materials used or sold in its operations.

The Acting Commissioner of Customs, having found this oath to be in compliance with the law and regulations, on December 18, 1964, issued to Nelbro Packing Company a certificate of compliance on customs Form 1262 as provided in § 3.21(i) of the regulations. The certificate and any authorization granted thereunder will expire three years from the date thereof unless there first occurs a change in the corporate status requiring a report under § 3.21(h) of the regulations.

[SEAL] LESTER D. JOHNSON,
Acting Commissioner of Customs.

[F.R. Doc. 64–13304; Filed, Dec. 24, 1964; 8:46 a.m.]

FEDERAL POWER COMMISSION

[Docket No. E–7194]

IDAHO POWER CO.

Notice of Application

DECEMBER 22, 1964.

Take notice that on November 25, 1964, an application, and on December 21, 1964, an amendment thereto, was filed with the Federal Power Commission, pursuant to section 204 of the Federal Power Act by Idaho Power Co. (Applicant), a corporation organized under the laws of the State of Maine and doing business in the States of Oregon, Idaho and Nevada, with its principal business office at Boise, Idaho, seeking an order authorizing the issuance of up to 250,000 shares of Common Stock at $5 par value, in the aggregate amount of $1,250,000 par value at or near the market price on outstanding stock. Applicant requests an exemption from § 34.1a (b) and (c) of the Commission's regulations under the Federal Power Act requiring competitive bidding. Applicant proposes to accept the proposal of Kidder, Peabody & Co., New York, for the purchase and underwriting of said Common Stock, at or near the market price, subject to marketing conditions at the time of offering with underwriting commission of 70 cents per share.

Applicant states that the purpose for which the Common Stock is to be issued and sold is to obtain permanent capital for repayment of the principal amount of short-term bank loans now outstanding which it expects will total $7,100,000 by the end of 1964 and for interim financing of the cost of construction, extension and improvement of operating facilities and towards the future construction costs.

Applicant's construction program for 1965 is estimated at $31,333,000, the outstanding items of which are as follows: Generating stations: Hell's Canyon, Homestead, Oreg., three units, total capability 425,000 kw, $11,072,000; transmission facilities, $6,848,000; substation facilities, $5,556,000; distribution lines and substations, $5,911,000.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 11, 1965, file with the Federal Power Commission, Washington, D.C., 20426, petitions or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). The application is on file and available for public inspection.

JOSEPH H. GUTRIDE,
Secretary.

[F.R. Doc. 64–13268; Filed, Dec. 24, 1964; 8:45 a.m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 812–1744]

DEPOSITORS FUND OF BOSTON, INC.

Notice of Application for Order of Exemption

DECEMBER 21, 1964.

Notice is hereby given that Depositors Fund of Boston, Inc. ("Applicant"), 111 Devonshire Street, Boston 9, Mass., a Massachusetts corporation, and an open-end, diversified management investment company registered under the Investment Company Act of 1940 ("Act"), has filed an application pursuant to section 6(c) of the Act for an order of the Commission exempting Applicant from compliance with the provisions of section 14(a) of the Act. All interested persons are referred to the application on file with the Commission for a complete statement of Applicant's representations which are summarized below.

Applicant has filed a registration statement under the Securities Act of 1933 for 1,999,999 shares of common stock, $1 par value, to be offered to investors in exchange for such investors' securities. Such registration has not yet become effective. The purpose of the Fund is to provide investors holding securities at relatively low tax bases with a means of exchanging such securities for shares of the Fund, thereby obtaining diversification without incurring any Federal capital gains tax liability at the time of such exchange. Vance, Sanders & Co., Inc., the dealer manager, and a group of securities dealers which it will form and manage intend to solicit deposits of securities, to be held by a depository in safekeeping for the separate account of each investor, for a period ending approximately ninety days from the effective date of the Applicant's registration statement under the Securities Act of 1933. At all times during the solicitation

period, the depositing investor will retain all incidents of ownership to the securities deposited, with the right to withdraw such securities from the depository without charge.

The minimum deposit to be accepted from any investor is to be securities having a market value of $25,000, and the exchange will not be consummated unless the market value of the deposited securities as at the effective date of the planned exchange aggregates a minimum of $30,000,000. If such value is obtained upon the termination of the solicitation period, Applicant, within 15 days thereafter, will send a special report to all depositors which will list all securities then on deposit, together with their current fair market values at that time and their respective Federal tax bases, as determined from the information furnished to the Applicant by the depositors, who have the right to withdraw any or all of their deposited securities at any time prior to the mailing of the report to investors and during a period of three weeks thereafter. Applicant will have the right to reject securities on deposit for a period of up to ten days after the end of the period during which the investors may withdraw. All of Applicant's shares which are issued in exchange for securities will be issued simultaneously on the effective date of the exchange. Each depositing investor is to represent that he will acquire shares of Applicant issued to him in the planned exchange without any intention of distributing them to the public.

Notice is further given that any interested person may, not later than January 6, 1965 at 5:30 p.m. submit to the Commission in writing a request for hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C., 20549. A copy of such request shall be served personally or by mail (air mail if the person being served is located more than 500 miles from the point of mailing) upon Applicant. Proof of such service (by affidavit or in case of an attorney-at-law by certificate) should be filed contemporaneously with the request. At any time after said date, as provided by Rule 0–5 of the rules and regulations promulgated under the Act, an order disposing of the application herein may be issued by the Commission upon the basis of the information stated in said application, unless an order for hearing upon said application shall be issued upon request or upon the Commission's own motion.

For the Commission (pursuant to delegated authority).

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F.R. Doc. 64–13263; Filed, Dec. 24, 1964; 8:45 a.m.]

CUMULATIVE CODIFICATION GUIDE—DECEMBER

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